United States Court of Appeals

for the Second Circuit

APPENDIX

75-7600

United States Court of Appeals

For the Second Circuit

B

COLUMBIA BROADCASTING SYSTEM, INC.,
Plaintiff-Appellant,

against

AMERICAN SOCIETY OF COMPOSERS,
AUTHORS AND PUBLISHERS, *et al.*,
Defendants-Appellees.

On Appeal from the United States District Court for the Southern District of New York

JOINT APPENDIX

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E 1

CBS v. ASCAP

Court Exhibit No. 2

Stipulation between CBS and ASCAP, dated 5/25/72, in this action.

E 2

OFFICE COPY ONLY

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

COLUMBIA BROADCASTING SYSTEM, INC., Plaintiff, -against- AMERICAN SOCIETY OF COMPOSERS, AUTHORS AND PUBLISHERS, et al., Defendants.	(M.E.L.) 69 Civ. 5740 STIPULATION

IT IS HEREBY STIPULATED, for the purposes of this action only, that the facts set forth below are true (each party to the stipulation, however, reserving the right to object to any of those facts on the ground of relevancy):

1. The following definitions shall apply to this stipulation:

(a) "CBS": plaintiff Columbia Broadcasting System, Inc.

(b) "CTN": the CBS Television Network, a division of CBS.

(c) "ASCAP": defendant American Society of Composers, Authors and Publishers.

(d) "BMI": defendant Broadcast Music, Inc.

(e) "NBC": the National Broadcasting Company, Inc.

(f) "NBC-TN": the NBC Television Network, a division of NBC.

(g) "ABC": American Broadcasting Companies, Inc.

(h) "ABC-TN": the ABC Television Network, a

division of ABC.

(i) "Person": unless otherwise indicated, any natural person, individual proprietorship, partnership, corporation or association.

(j) "Member": any person who has been elected to membership in ASCAP, and any person or fiduciary who has signed a membership agreement as a successor to a deceased writer member.

(k) "Amended Final Judgment": the Amended Final Judgment in United States v. ASCAP, Civ. No. 13-95 (S.D.N.Y. March 14, 1950).

(l) "User": the same meaning as that ascribed to the word by Section II E of the Amended Final Judgment.

(m) "Performance right": the right to give non-dramatic public performance for profit of a copyrighted musical composition, including copyrighted arrangements of a musical composition otherwise in the public domain.

(n) "Repertory": that body of copyrighted musical compositions to which ASCAP has the right to grant performance rights licenses.

(o) "United States": the United States, its territories and possessions.

(p) "Broadcaster": any television or radio station or network located in the United States.

2. Plaintiff is a New York corporation with its principal office at 51 West 52nd Street, New York, N. Y. Plaintiff is engaged in the business, among others, of operating CTN which transmits television programs to five television stations owned by plaintiff (located in New York,

Los Angeles, Chicago, Philadelphia and St. Louis) and, pursuant to affiliation agreements, to approximately 190 independently owned and operated television stations (located in various parts of the United States), and contracts with advertisers for the broadcast of commercial announcements. The standard forms of affiliation agreement are annexed hereto as Exhibit 1.

3. ASCAP is an unincorporated association with its principal office at One Lincoln Plaza, New York, N. Y.

4. The standard forms of ASCAP writer and publisher membership agreements and the writer and publisher applications for membership are annexed hereto, respectively, as Exhibits 2 and 3. The standard forms of ~~such documents~~ membership and television agreements for the period preceding Exhibits 2 and 3 are annexed hereto, respectively, as Exhibits 4 and 5. The numbers of ASCAP writer and publisher members at the close of each of the years 1960 through 1969 are set forth in Schedule A.

5. ASCAP has agreements with the foreign performance rights licensing societies listed in Exhibit 6. In the aggregate those societies have numerous members who own numerous copyrighted musical compositions, many of which are performed on CTN. Forms of agreements between ASCAP and those societies are annexed as Exhibits 7 and 8.

6. Annexed hereto as Exhibit 9 are the ASCAP Articles of Association; annexed hereto as Exhibit 10 is the Amended Final Judgment; annexed hereto as Exhibit 11 is the Order of January 7, 1960, and attachments, as amended to date in United States v. ASCAP (hereinafter referred to collectively as the "Order of January 7, 1960"); annexed hereto as

Exhibit 12 is a pamphlet entitled "The ASCAP Survey - Its Design and Objectives" which was prepared by Joel Dean Associates and distributed to ASCAP members on June 28, 1963.

7. ASCAP's annual financial reports to its members for each of the years 1961 through 1969 are annexed hereto as Exhibit 13.

8. Since at least the entry of the Amended Final Judgment, the only forms of ASCAP licenses held by broadcasters have been the "blanket", "per program" and, in a limited number of cases, "all talk" licenses.

9. All commercial television networks have throughout their existence held "blanket" licenses from ASCAP. During at least the past 10 years, virtually all broadcasters have held ASCAP licenses. Throughout that period, between 99% and 100% of all broadcasters so licensed have held ASCAP "blanket" licenses.

10. For the years, 1962 through 1969, CTN paid license fees to ASCAP in the following amounts:

1962	-	$3,572,000
1963	-	$4,015,000
1964	-	$4,265,000
1965	-	$4,505,000
1966	-	$4,760,000
1967	-	$5,050,000
1968	-	$5,350,000
1969	-	$5,680,000

11. ASCAP's standard forms of "blanket" and "per program" licenses for other categories of broadcasters (i.e., local radio stations, local television stations, etc.) currently in effect are annexed hereto as Exhibit 14. ASCAP's standard forms of "blanket" and "per program" licenses for such broadcasters preceding the forms currently in use are annexed hereto as Exhibit 15.

12. Since the establishment of CTN in 1946, virtually all of the copyrighted music used on CTN programs has been music in either the ASCAP repertory or the BMI repertory licensed by CTN from ASCAP and BMI, respectively.

13. There is a portion of the performance rights to ASCAP music appearing on CTN programs as to which it would be relatively easy for CTN or producers of CTN programs to negotiate for licenses directly with the owners of the performance rights to said music. There is a portion of the performance rights to ASCAP music appearing on CTN programs as to which it would be impracticable for CTN or such producers to negotiate for licenses directly with the owners of the performance rights of said music. [Without limiting the parties' rights to adduce and offer additional proof with respect to any subject, both parties specifically reserve the right to adduce and offer proof regarding the reasons for such impracticability.]

14. It shall be deemed that the vast preponderance of CTN programs using music use some ASCAP music.

15. If CTN chose not to have an ASCAP license, the producers of CTN programs did not obtain such licenses, and NBC-TN and ABC-TN had such licenses, to the extent that CTN or the producers of CTN programs did not otherwise obtain the performance rights to the ASCAP music which they desired to use on CTN programming, CTN would be at a competitive disadvantage vis-a-vis NBC-TN and ABC-TN.

16. Very few individual broadcasters have ever requested performance rights licenses directly from individual ASCAP members. It ~~may~~ shall be deemed that ASCAP members have not established facilities or procedures for processing such requests.

17. It shall be deemed that virtually all major

ASCAP publishers own or are owned by corporations which are affiliates of BMI and that no ASCAP writer member is a writer affiliate of BMI.

18. CBS is also engaged in the following businesses, among others: through the CBS Radio Division it is one of the national radio broadcasting networks; it owns and operates radio stations, both AM and FM, in the five cities noted in paragraph 2 herein and in San Francisco and Boston; its Cinema Center Films Division produces feature length motion pictures which have been exhibited in theaters in the United States and abroad; its CBS Records Division is one of the largest producers, manufacturers and distributors of records in the United States; it engages in other diversified business activities, including a publishing firm (Holt, Rinehart & Winston, Inc.), the New York Yankees professional baseball team, and other interests.

19. BMI is a New York corporation with its principal office in New York City. BMI is engaged in the business, among others, of acquiring from copyright owners and others exclusive rights of nondramatic public performance for profit of copyrighted musical compositions, and granting to users, including television and radio networks and broadcasting stations, non-exclusive licenses for such performances. A copy of BMI's Certificate of Incorporation is annexed hereto as Exhibit 16.

20. CBS has been an ASCAP licensee since approximately 1928 and has had ASCAP licenses for CTN since 1946.

21. There are in the United States approximately 511 operating commercial VHF television stations, 190 operating commercial UHF television stations, 89 operating non-profit VHF television stations and 124 operating non-profit UHF television stations.

22. CTN, NBC-TN and ABC-TN each has affiliation

agreements with approximately 190 television stations, in addition to owning and operating the five television stations referred to below.

23. CTN's receipts from advertisers, for each of the last five years, have exceeded the figure set forth in Schedule B which is annexed to a separate stipulation and protective order, but which shall be deemed to be a part hereof.

24. The average number of hours of programming with commercial minutes transmitted by CTN at any time (in respect of which station payments were made) and carried each day by a CTN affiliate from 6:00 p.m. through 11:00 p.m. during the month of February 197- shall be deemed to be that set forth in Schedule C annexed hereto. The average number of hours of CTN, NBC-TN and ABC-TN programming carried each day by a network affiliate from 6:00 p.m. through 11:00 p.m. during a composite sample week from the months of February and March 1968 shall be deemed to be that set forth in Schedule D annexed hereto.

25. Each television network sells to advertisers the right to have their commercial announcements broadcast in association with network programs on the broadcasting facilities of those of its affiliated stations which accept such programs.

26. CTN programs contain a substantial portion of the copyrighted musical compositions used on network television programs. CTN decides which programs it will offer to transmit to affiliated stations.

27. In general, each television network provides national advertisers with coverage of a substantial portion

of the national public viewing television programs.

28. CTN programs contain a substantial portion of the copyrighted musical compositions used on network television programs during the "prime time" evening hours. CTN decides which programs it will offer to transmit to affiliated stations during "prime time" evening hours.

29. In general, each television network provides national advertisers with coverage of a substantial portion of the national public viewing television programs during the "prime time" evening hours.

30. The five television stations owned and operated by CBS in New York, Los Angeles, Chicago, Philadelphia and St. Louis are licensed for operation by the FCC under Title III of the Communications Act of 1934, as amended (47 U.S.C. §§ 301, et seq.). Together they broadcast a substantial amount of musical compositions.

31. The five television stations owned and operated by NBC in New York, Los Angeles, Chicago, Cleveland and Washington, D.C., are licensed for operation by the FCC under Title III of the Communications Act of 1934, as amended (47 U.S.C. §§ 301, et seq.). Together they broadcast a substantial amount of musical compositions.

32. The five television stations owned and operated by ABC in New York, Los Angeles, Chicago, San Francisco and Detroit are licensed for operation by the FCC under Title III of the Communications Act of 1934, as amended (47 U.S.C. §§ 301, et seq.). Together they broadcast a substantial amount of musical compositions.

33. BMI was organized in 1939 by broadcasters, including CBS and NBC.

34. By means of purchase,or by term contracts

with the owners of copyrights to musical compositions, BMI began and continues to (a) obtain the exclusive right to license the nondramatic public performance for profit of musical compositions, and (b) grant licenses to the various networks and broadcasters. Licenses are also offered to other users.

35. BMI's stock was offered and issued to the radio networks and many broadcasting stations, including some stations which were affiliated with CBS. When CBS disposed of its stock in BMI in 1959, it turned it back to BMI for the price originally paid in 1939. Some broadcasting stations having affiliation agreements with CBS own stock in BMI.

36. The popularity of a musical composition is often enhanced by coming to the public's attention by means of broadcasting.

37. Under CBS's proposal for a per-use form of license, to the extent that the performance rights for music used on CTN programs could be obtained from the owners of the performance rights to such music, they would, in most cases, be obtained by the producers of such programs.

May 25, 1972

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E 11

CBS v. ASCAP

CX 2, Exhibit No. 1

Standard form of CTN "Television Affiliation Agreement", dated 2/66.

CBS TELEVISION NETWORK

A Division of Columbia Broadcasting System, Inc.

E 12

TELEVISION AFFILIATION AGREEMENT

CBS TELEVISION NETWORK, a Division of Columbia Broadcasting System, Inc., 51 West 52 Street, New York, New York 10019 ("CBS"), and

("Broadcaster"), licensed to operate television station in on channel number ("Affiliated Station"), hereby mutually covenant and agree, as of the day of , 19 , as follows:

1. *Offer, Acceptance and Delivery of Network Programs.*

Broadcaster shall have a "first call" on CBS network television programs ("Network Programs") as follows:

(a) *Offer of Network Programs.*

CBS shall offer to Broadcaster for broadcasting by Affiliated Station:

(i) those Network Programs which are to be broadcast on a network basis by any television broadcast station licensed to operate in Affiliated Station's community of license and which contain one or more commercial announcements paid for by or on behalf of one or more CBS advertisers ("Network Commercial Programs") and

(ii) all other Network Programs to be broadcast on a network basis ("Network Sustaining Programs"); provided, however, that CBS shall not be obligated to offer to Broadcaster either such Network Sustaining Programs as CBS elects in its sole discretion not to have so broadcast in a particular community or communities (including Affiliated Station's community of license) or recordings of Network Sustaining Programs unless CBS has the right to record such Network Sustaining Programs and to furnish such recordings to Broadcaster for broadcast hereunder.

(b) *Acceptance of Network Programs.*

Broadcaster may accept any such offer only by notifying CBS of such acceptance (i) as to regularly scheduled Network Programs, within two weeks after such offer (or such longer period as CBS may specify therein); and (ii) as to all other Network Programs, within 72 hours (exclusive of Saturdays, Sundays and holidays) after such offer; provided, however, that, if the first broadcast referred to in such offer is scheduled to occur less than two weeks after the making of the offer in the case of regularly scheduled Network Programs, or less than 72 hours after the making of the offer in the case of all other Network Programs, Broadcaster shall notify CBS of the acceptance or rejection of such offer as promptly as possible and in any event prior to the first broadcast time specified in such offer. Such acceptance shall constitute Broadcaster's agreement that Affiliated Station will broadcast such Network Program or Programs in accordance with the terms of this Agreement and of such offer, and so long as Affiliated Station so broadcasts such Network Program or Programs, CBS will not, subject to its rights in the program material, authorize the broadcast thereof on a network basis by any other television broadcast station licensed to operate in Affiliated Station's community of license; provided, however, that CBS shall have the right to authorize any television broadcast station, wherever licensed to operate, to broadcast any Network Program consisting of an address by the President of the United States of America on a subject of public importance or consisting of coverage of a matter of immediate national concern. If, as to any Network Program offered hereunder, Broadcaster does not notify CBS as provided for in this Paragraph 1(b), Broadcaster shall have no rights with respect to such Network

Program, and CBS may offer such Network Program on the same or different terms to any other television broadcast station or stations licensed to operate in Affiliated Station's community of license; provided, however, that, if any Network Program offered hereunder is accepted upon any other terms or conditions to which CBS agrees in writing, then the provisions of this Agreement shall apply to the broadcast of such Network Program except to the extent such provisions are expressly varied by the terms and conditions of such acceptance as so agreed to by CBS.

(c) *Delivery of Network Programs.*

Any obligation of CBS to furnish Network Programs for broadcasting by Affiliated Station is subject to CBS's making of arrangements satisfactory to it for the delivery of Network Programs to Affiliated Station.

2. *Payment.*

(a) *Definitions.*

(i) "Live Time Period" means the time period or periods specified by CBS in its initial offer of a Network Program to Broadcaster for the broadcast of such Network Program over Affiliated Station. (ii) "Affiliated Station's Network Rate" shall be $ and is used herein solely for purposes of computing payments by CBS to Broadcaster. (iii) "Commercial Availability" means a period of time made available by CBS during a Network Commercial Program for one or more Network Commercial Announcements or local cooperative commercial announcements. (iv) "Network Commercial Announcement" means a commercial announcement broadcast over Affiliated Station during a Commercial Availability and paid for by or on behalf of one or more CBS advertisers, but does not include announcements consisting of billboards, credits, public service announcements, promotional announcements and announcements required by law.

(b) *Payment for Programs.*

For each Network Commercial Program or portion thereof, except those specified in Paragraph 2(c) hereof, which is broadcast over Affiliated Station during the Live Time Period therefor and the Live Time Period for which is set forth in the table below, CBS shall pay Broadcaster the amount resulting from multiplying the following:

(i) Affiliated Station's Network Rate; by

(ii) the percentage set forth below opposite such time period; by

(iii) the fraction of an hour substantially occupied by such program or portion thereof; by

(iv) the fraction of the aggregate length of all Commercial Availabilities during such program or portion thereof occupied by Network Commercial Announcements.

Table

Monday through Friday	
7:00 a.m.-11:15 a.m.	7%
11:15 a.m.- 5:00 p.m.	12%
5:00 p.m.- 6:00 p.m.	15%
6:00 p.m.-11:00 p.m.	32%
Saturday	
8:00 a.m.- 9:00 a.m.	7%
9:00 a.m.- 2:00 p.m.	12%
5:00 p.m.- 6:00 p.m.	15%
6:00 p.m.-11:00 p.m.	32%
Sunday	
4:00 p.m.- 5:00 p.m.	12%
5:00 p.m.- 6:00 p.m.	15%
6:00 p.m.-11:00 p.m.	32%
11:00 p.m.-11:30 p.m.	15%

Note: All times in this Paragraph 2 are expressed in terms of Affiliated Station's then current local time.

For each Network Commercial Program or portion thereof, except those specified in Paragraph 2(c) hereof, which is broadcast by Affiliated Station during a time period other than the Live Time Period therefor and the Live Time Period for which is set forth in the table above, CBS shall pay Broadcaster as if Affiliated Station had broadcast such program or portion thereof during such Live Time Period, except that:

(i) if the percentage set forth above opposite the time period during which Affiliated Station broadcast such program or portion thereof is less than that set forth opposite such Live Time Period, then CBS shall pay Broadcaster on the basis of the time period during which Affiliated Station broadcast such program or portion thereof; and

(ii) if the time period or any portion thereof during which Affiliated Station broadcast such program is not set forth in the table above, then CBS shall pay Broadcaster in accordance with Paragraph 2(c) hereof.

(c) *Payment for Other Programs.*

CBS shall pay Broadcaster such amounts as CBS and Broadcaster shall agree upon prior to the expiration of the applicable time periods set forth in Paragraph 1(b) hereof for all Network Commercial Programs broadcast by Affiliated Station consisting of (i) sports programs, (ii) special events programs (including, but not limited to, such programs as political conventions, election coverage, presidential inaugurations and related events, space shoots, parades and pageants) and (iii) programs for which CBS specified a Live Time Period, or which Affiliated Station broadcast during a time period, any portion of which is not set forth in the table above.

(d) *Deduction.*

From the amounts otherwise payable to Broadcaster hereunder, there shall be deducted, for each week of the term of this Agreement, a sum equal to 205% of Affiliated Station's Network Rate, as well as a sum equal to the total of whatever fees, if any, may have been agreed upon by CBS and Broadcaster with respect to local cooperative commercial announcements broadcast therein.

(e) *Changes in Rate.*

CBS may reduce Affiliated Station's Network Rate in connection with a re-evaluation and reduction of the Affiliated Station Network Rate of CBS's affiliated stations in general by giving Affiliated Station at least thirty-days' prior notice of such reduction in Affiliated Station's Network Rate in which event Broadcaster may terminate this Agreement, effective as of the effective date of any such reduction, on not less than fifteen-days' prior notice to CBS.

(f) *Time of Payment.*

CBS shall make the payments hereunder reasonably promptly after the end of each four-week or five-week accounting period of CBS for Network Commercial Programs broadcast during such accounting period.

(g) *Reports.*

Broadcaster shall submit to CBS in the manner requested by CBS such reports as CBS may reasonably request concerning the broadcasting of Network Programs by Affiliated Station.

3. *Term and Termination.*

(a) *Term.*

The term of this Agreement shall be the period commencing on 19 and expiring on 19 ; provided, however, that, unless Broadcaster or CBS shall notify the other at least six months prior to the expiration of the original period or any subsequent two-year period that the party giving such notice does not wish to have the term extended beyond such period, the term of this Agreement shall be automatically extended upon the expiration of the original

period and each subsequent extension thereof for an additional period of two years; and provided further that either party shall have the right to terminate the term of this Agreement effective at any time by giving notice of such termination to the other party at least twelve months prior to the effective date of termination specified therein. Notwithstanding any provision of any offer or acceptance under Paragraph 1 hereof, upon the expiration or any termination of the term of this Agreement, Broadcaster shall have no right whatsoever to broadcast over Affiliated Station any Network Program.

(b) *Termination on Transfer of License or Interest in Broadcaster.*

Broadcaster shall notify CBS forthwith if any application is made to the Federal Communications Commission relating to a transfer either of any interest in Broadcaster or of Broadcaster's license for Affiliated Station. CBS shall have the right to terminate the term of this Agreement effective as of the effective date of any such transfer (except a transfer within the provisions of Section 1.540(b) of the Federal Communications Commission's present Rules and Regulations) by giving Broadcaster notice thereof within twenty days after the date on which Broadcaster gives CBS notice of the making of such application. If CBS does not so terminate the term of this Agreement, Broadcaster shall, prior to the effective date of any such transfer of Broadcaster's license for Affiliated Station, procure and deliver to CBS, in form satisfactory to CBS, the agreement of the proposed transferee that, upon consummation of the transfer, the transferee will unconditionally assume and perform all obligations of Broadcaster under this Agreement. Upon delivery of said agreement to CBS, in form satisfactory to it, the provisions of this Agreement applicable to Broadcaster shall, effective upon the date of such transfer, be applicable to such transferee. If Broadcaster does not so notify CBS or does not so procure such agreement of the proposed transferee, then CBS shall have the right to terminate the term of this Agreement effective upon giving Broadcaster and the transferee notice thereof within twenty days after the later of the effective date of such transfer and the date on which CBS first learns of such application.

4. *Use of Network Programs.*

(a) *General.*

Broadcaster shall not broadcast any Network Program over Affiliated Station unless such Network Program has first been offered by CBS to Broadcaster for broadcasting over Affiliated Station and has been accepted by Broadcaster in accordance with this Agreement. Except with the prior written consent of CBS, Broadcaster shall neither sell any Network Program, in whole or in part, or any time therein, for sponsorship, nor otherwise use Network Programs except as specifically authorized in this Agreement. Affiliated Station shall not broadcast any commercial announcement or announcements during any interval, within a Network Program, which is designated by CBS to Affiliated Station as being for the sole purpose of making a station identification announcement. Broadcaster shall, with respect to each Network Program broadcast over Affiliated Station, broadcast such Network Program in its entirety (including but not limited to commercial announcements, billboards, credits, public service announcements, promotional announcements and network identification) during the entire length of the time period for the Network Program as offered to Broadcaster by CBS. Nothing herein shall be construed as preventing Broadcaster's deletion of (i) part of a Network Program in order to broadcast an emergency announcement or news bulletin; (ii) a promotional announcement for a Network Program not to be broadcast over Affiliated Station; (iii) that part of a Network Program that continues beyond its scheduled termination; or (iv) such words, phrases or scenes as Broadcaster, in the reasonable exercise of its judgment, determines it would not be in the public interest to broadcast over Affiliated Station; provided, however, that Broadcaster shall not substitute for any material deleted pursuant to this clause (iv) any commercial or promotional announcement of any kind whatsoever; and provided further that Broadcaster shall notify CBS of every such deletion within 72 hours thereof. Broadcaster shall not, without CBS's prior written consent, authorize or permit any Network Program, recording, or other material furnished by CBS to Broadcaster or Affiliated Station hereunder to be recorded, duplicated, rebroadcast, or otherwise used for any purpose whatsoever other than broadcasting by Affiliated Station as provided herein; provided, however, that the failure of Broadcaster to prohibit or prevent the carrying of any such Network Program, recording, or other material by one or more so-called community antenna television systems owned or controlled by Broadcaster (or by one or more so-called community antenna television systems not authorized by Broadcaster to carry any of the same) shall not be deemed to be an authorization or permission within the meaning of this sentence; and provided further that nothing included in this sentence or elsewhere in this

Agreement shall be, or be deemed to be, a license to Broadcaster of, an undertaking by CBS not to enforce against Broadcaster, or a waiver of, any copyright or other rights in any Network Program which, at the commencement of the term of this Agreement or at any other time or times thereafter, CBS may have with respect to the carrying of such Network Program over any community antenna television systems owned or controlled by Broadcaster.

(b) *Recordings Furnished by CBS.*

Broadcaster shall use recordings of Network Programs furnished by CBS only for a single broadcast by Affiliated Station and shall observe any limitations which CBS may place on the use of such recordings. Broadcaster shall return to CBS, transportation prepaid by Broadcaster, promptly following the single broadcast thereof, at such place as CBS may specify, and in the same condition as received by Broadcaster, ordinary wear and tear excepted, each such recording, together with the reels and containers furnished therewith. As used in this Agreement, "recording", in its various forms, shall include recordings made on motion picture film, video tape, or any other medium now or hereafter developed.

5. *Rejection, Refusal, Substitution and Cancellation of Network Programs.*

(a) *Rights of Broadcaster and CBS.*

With respect to Network Programs offered to or already accepted hereunder by Broadcaster, nothing in this Agreement shall be construed to prevent or hinder:

(i) Broadcaster from rejecting or refusing any such Network Program which Broadcaster reasonably believes to be unsatisfactory or unsuitable or contrary to the public interest, or from substituting a progam which, in Broadcaster's opinion, is of greater local or national importance; or

(ii) CBS from substituting one or more other Network Commercial or Sustaining Programs, in which event CBS shall offer such substituted program or programs to Broadcaster pursuant to the provisions of Paragraph 1 hereof; or

(iii) CBS from canceling one or more Network Programs.

(b) *Notice.*

In the event of any such rejection, refusal, substitution or cancellation by either party hereto, such party shall notify the other by private wire or telegram thereof as soon as practicable. Notice given to CBS pursuant to this Paragraph 5 shall be addressed, in the case of Network Commercial Programs, to Station Clearance Department, CBS Television Network, and, in the case of Network Sustaining Programs, to Affiliate Relations Department, CBS Television Network.

6. *Disclosure of Information.*

CBS shall endeavor in good faith, before furnishing any Network Program, to disclose to Broadcaster information of which CBS has knowledge concerning the inclusion of any matter in such Network Program for which any money, service or other valuable consideration is directly or indirectly paid or promised to, or charged or accepted by, CBS or any employee of CBS or any other person with whom CBS deals in connection with the production or preparation of such Network Program. As used in this Paragraph 6, the term "service or other valuable consideration" shall not include any service or property furnished without charge or at a nominal charge for use in, or in connection with, any Network Program "unless it is so furnished in consideration for an identification in a broadcast of any person, product, service, trademark, or brand name beyond an identification which is reasonably related to the use of such service or property on the broadcast", as such words are used in Section 317 of the Communications Act of 1934 as amended. The provisions of this Paragraph 6 requiring the disclosure of information shall not apply in any case where, because of a waiver granted by the Federal Communications Commission, an announcement is not required to be made under said Section 317. The inclusion in any such Network Program of an announcement required by said Section 317 shall constitute the disclosure to Broadcaster required by this Paragraph 6.

7. *Indemnification.*

CBS will indemnify Broadcaster from and against any and all claims, damages, liabilities, costs and expenses arising out of the broadcasting, pursuant to this Agreement, of Network Programs furnished by CBS

to the extent that such claims, damages, liabilities, costs and expenses are (i) based upon alleged libel, slander, defamation, invasion of the right of privacy, or violation or infringement of copyright or literary or dramatic rights; (ii) based upon the broadcasting of Network Programs as furnished by CBS, without any deletions by Broadcaster; and (iii) not based upon any material added by Broadcaster to such Network Programs (as to which deletions and added material Broadcaster shall, to the like extent, indemnify CBS, all network advertisers, if any, on such Network Program, and the advertising agencies of such advertisers). Furthermore, each party will so indemnify the other only if such other party gives the indemnifying party prompt notice of any claim or litigation to which its indemnity applies; it being agreed that the indemnifying party shall have the right to assume the defense of any or all claims or litigation to which its indemnity applies and that the indemnified party will cooperate fully with the indemnifying party in such defense and in the settlement of such claim or litigation. Except as herein provided to the contrary, neither Broadcaster nor CBS shall have any rights against the other party hereto for claims by third persons or for the nonoperation of facilities or the nonfurnishing of Network Programs for broadcasting if such nonoperation or nonfurnishing is due to failure of equipment, action or claims by any third person, labor dispute or any cause beyond such party's reasonable control.

8. *General.*

(a) As of the beginning of the term hereof, this Agreement takes the place of, and is substituted for, any and all television affiliation agreements heretofore existing between Broadcaster and CBS concerning Affiliated Station, subject only to the fulfillment of any obligations thereunder relating to events occurring prior to the beginning of the term hereof. This Agreement cannot be changed or terminated orally and no waiver by either Broadcaster or CBS of any breach of any provision hereof shall be or be deemed to be a waiver of any preceding or subsequent breach of the same or any other provision of this Agreement.

(b) The obligations of Broadcaster and CBS under this Agreement are subject to all applicable federal, state and local law, rules and regulations (including but not limited to the Communications Act of 1934 as amended and the Rules and Regulations of the Federal Communications Commission) and this Agreement and all matters or issues collateral thereto shall be governed by the law of the State of New York applicable to contracts performed entirely therein.

(c) Neither Broadcaster nor CBS shall be or be deemed to be or hold itself out as the agent of the other under this Agreement.

(d) All notices given hereunder shall be given in writing, by personal delivery, mail, telegram, or private wire at the respective addresses of Broadcaster and CBS set forth above, unless either party at any time or times designates another address for itself by notifying the other party thereof by certified mail, in which case all notices to such party shall thereafter be given at its most recently so designated address. Notice given by mail shall be deemed given on the date of mailing thereof with postage prepaid. Notice given by telegram shall be deemed given on delivery of such telegram to a telegraph office with charges therefor prepaid or to be billed to the sender thereof. Notice given by private wire shall be deemed given on the sending thereof.

(e) The titles of the paragraphs in this Agreement are for convenience only and shall not in any way affect the interpretation of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

CBS TELEVISION NETWORK,
a Division of Columbia Broadcasting System, Inc.

By .....

By .....

RIDER 2(d)

This Rider 2(d) contains provisions supplementary to those in the attached Television Affiliation Agreement and forms a part thereof; in case of any conflict between said provisions, the provisions of this Rider shall govern.

Paragraph 2(d) of said Agreement provides, in part, for the weekly deduction, from amounts otherwise payable under this Agreement to Broadcaster, of a sum equal to a specified percentage of Affiliated Station's Network Rate. A portion (37% of Affiliated Station's Network Rate) of that sum is to be applied towards the ASCAP and BMI Payment; said Payment being, for any week, the aggregate of the amounts properly allocable to such week with respect to payments by CBS (or of the amounts allocated by CBS on the basis of its estimate of total payments for the then current year or other period) to American Society of Composers, Authors and Publishers (ASCAP) and Broadcast Music, Inc. (BMI) for the broadcast during Network Programs of music licensed by ASCAP or BMI. If at any time or times the total of all money so applied (under this Agreement and under compensation arrangements covering broadcasts of Network Commercial Programs by all other television stations during such week) towards the ASCAP and BMI Payment is for any week less than 50% of the ASCAP and BMI Payment, then, for each week during the term hereof with respect to which there shall be any such deficiency, there shall also be deducted, from the amounts otherwise payable under this Agreement to Broadcaster, a sum equal to the ASCAP and BMI Adjustment. The "ASCAP and BMI Adjustment" means Affiliated Station's share of the amount by which 50% of the ASCAP and BMI Payment allocable (or allocated as above provided for) to such week exceeds said total and shall be computed on the basis of the ratio of Affiliated Station's Network Rate to the aggregate of the Network Rates of all CBS Television Network affiliated stations within the United States and expressed as a percentage of Affiliated Station's Network Rate; provided, however, that CBS shall from time to time make such adjustments in the ASCAP and BMI Payment and in the ASCAP and BMI Adjustment as may be appropriate so that for each calendar year or portion thereof during the term hereof the total of all said money applied towards the ASCAP and BMI Payment and of all weekly ASCAP and BMI Adjustments shall equal 50% of the total for each said respective calendar year (or of the said portion thereof) of all payments finally payable by CBS for the broadcast therein during Network Programs of music licensed by ASCAP or BMI.

CBS v. ASCAP

CX 2, Exhibit No. 2

Standard form of ASCAP writer and publisher membership agreement, Form 10M-1-72U, covering the years 1966-1975.

1966 - 1975

E 20

No.

Rec'd

Agreement Between

AND

American Society

OF

Composers, Authors & Publishers

1 LINCOLN PLAZA

NEW YORK, N. Y. 10023

DATED:

AGREEMENT made between the Undersigned (for brevity called "*Owner*") and the AMERICAN SOCIETY OF COMPOSERS, AUTHORS AND PUBLISHERS (for brevity called "*Society*"), in consideration of the premises and of the mutual covenants hereinafter contained, as follows:

1. The *Owner* grants to the *Society* for the term hereof, the right to license non-dramatic public performances (as hereinafter defined), of each musical work:

Of which the *Owner* is a copyright proprietor; or

Which the *Owner*, alone, or jointly, or in collaboration with others, wrote, composed, published, acquired or owned; or

In which the *Owner* now has any right, title, interest or control whatsoever, in whole or in part; or

Which hereafter, during the term hereof, may be written, composed, acquired, owned, published or copyrighted by the *Owner*, alone, jointly or in collaboration with others; or

In which the *Owner* may hereafter, during the term hereof, have any right, title, interest or control, whatsoever, in whole or in part.

The right to license the public performance of every such musical work shall be deemed granted to the *Society* by this instrument for the term hereof, immediately upon the work being written, composed, acquired, owned, published or copyrighted.

The rights hereby granted shall include:

(a) All the rights and remedies for enforcing the copyright or copyrights of such musical works, whether such copyrights are in the name of the *Owner* and/or others, as well as the right to sue under such copyrights in the name of the *Society* and/or in the name of the *Owner* and/or others, to the end that the *Society* may effectively protect and be assured of all the rights hereby granted.

(b) The non-exclusive right of public performance of the separate numbers, songs, fragments or arrangements, melodic or selections forming part or parts of musical plays and dramatico-musical compositions, the *Owner* reserving and excepting from this grant the right of performance of musical plays and dramatico-musical compositions in their entirety, or any part of such plays or dramatico-musical compositions on the legitimate stage.

(c) The non-exclusive right of public performance by means of radio broadcasting, telephony, "wired wireless," all forms of synchronism with motion pictures, and/or any method of transmitting sound other than television broadcasting.

(d) The non-exclusive right of public performance by television broadcasting; provided, however, that:

(i) This grant does not extend to or include the right to license the public performance by television broadcasting or otherwise of any rendition or performance of (a) any opera, operetta, musical comedy, play or like production, as such, in whole or in part, or (b) any composition from any opera, operetta, musical comedy, play or like production (whether or not such opera, operetta, musical comedy, play or like production was presented on the stage or in motion picture form) in a manner which recreates the performance of such composition with substantially such distinctive scenery or costume as was used in the presentation of such opera, operetta, musical comedy, play or like production (whether or not such opera, operetta, musical comedy, play or like production was presented on the stage or in motion picture form): provided, however, that the rights hereby granted shall be deemed to include a grant of the right to license non-dramatic performances of compositions by television broadcasting of a motion picture containing such composition if the rights in such motion picture other than those granted hereby have been obtained from the parties in interest.

(ii) Nothing herein contained shall be deemed to grant the right to license the public performance by television broadcasting of dramatic performances. Any performance of a separate musical composition which is not a dramatic performance, as defined herein, shall be deemed to be a non-dramatic performance. For the purposes of this agreement, a dramatic performance shall mean a performance of a musical composition on a television program in which there is a definite plot depicted by action and where the performance of the musical composition is woven into and carries forward the plot and its accompanying action. The use of dialogue to establish a mere program format or the use of any non-dramatic device merely to introduce a performance of a composition shall not be deemed to make such performance dramatic.

(iii) The definition of the terms "dramatic" and "non-dramatic" performances contained herein are purely for the purposes of this agreement and for the term thereof and shall not be binding upon or prejudicial to any position taken by either of us subsequent to the term hereof or for any purpose other than this agreement.

(e) The *Owner* may at any time and from time to time, in good faith, restrict the radio or television broadcasting of compositions from musical comedies, operas, operettas and motion pictures, or any other composition being excessively broadcast, only for the purpose of preventing harmful effect upon such musical comedies, operas, operettas, motion pictures or compositions, in respect of other interests under the copyrights thereof; provided, however, that the right to grant limited licenses will be given, upon application, as to restricted compositions, if and when the *Owner* is unable to show reasonable hazards to his or its major interests likely to result from such radio or television broadcasting; and provided further that such right to restrict any such composition shall not be exercised for the purpose of permitting the fixing or regulating of fees for the recording or transcribing of such composition, and provided further that in no case shall any charges, "free plugs", or other consideration be required in respect of any permission granted to perform a restricted composition; and provided further that in no event shall any composition, after the initial radio or television broadcast thereof, be restricted for the purpose of confining further radio or television broadcasts thereof to a particular artist, station, network or program. The *Owner* may also at any time and from time to time, in good faith, restrict the radio or television broadcasting of any composition, as to which any suit has been brought or threatened on a claim that such composition infringes a composition not contained in the repertory of *Society* or on a claim by a non-member of *Society* that *Society* does not have the right to license the public performance of such composition by radio or television broadcasting.

2. The term of this agreement shall be for a period commencing on the date hereof and expiring on the 31st day of December, 1975.

3. The *Society* agrees, during the term hereof, in good faith to use its best endeavors to promote and carry out the objects for which it was organized, and to hold and apply all royalties, profits, benefits and advantages arising from the exploitation of the rights assigned to it by its several members, including the *Owner*, to the uses and purposes as provided in its Articles of Association (which are hereby incorporated by reference), as now in force or as hereafter amended.

4. The *Owner* hereby irrevocably, during the term hereof, authorizes, empowers and vests in the *Society* the right to enforce and protect such rights of public performance under any and all copyrights, whether standing in the name of the *Owner* and/or others, in any and all works copyrighted by the *Owner*, and/or by others; to prevent the infringement thereof, to litigate, collect and receipt for damages arising from infringement, and in its sole judgment to join the *Owner* and/or others in whose names the copyright may stand, as parties plaintiff or defendants in suits or proceedings; to bring suit in the name of the *Owner* and/or in the name of the *Society*, or others in whose name the copyright may stand, or otherwise, and to release, compromise, or refer to arbitration any actions, in the same manner and to the same extent and to all intents and purposes as the *Owner* might or could do, had this instrument not been made.

5. The *Owner* hereby makes, constitutes and appoints the *Society*, or its successor, the *Owner's* true and lawful attorney, irrevocably during the term hereof, and in the name of the *Society* or its successor, or in the name of the *Owner*, or otherwise, to do all acts, take all proceedings, execute, acknowledge and deliver any and all instruments, papers, documents, process and pleadings that may be necessary, proper or expedient to restrain infringements and recover damages in respect to or for the infringement or other violation of the rights of public performance in such works, and to discontinue, compromise or refer to arbitration any such proceedings or actions, or to make any other disposition of the differences in relation to the premises.

6. The *Owner* agrees from time to time, to execute, acknowledge and deliver to the *Society*, such assurances, powers of attorney or other authorizations or instruments as the *Society* may deem necessary or expedient to enable it to exercise, enjoy and enforce, in its own name or otherwise, all rights and remedies aforesaid.

7. It is mutually agreed that during the term hereof the Board of Directors of the *Society* shall be composed of an equal number of writers and publishers respectively, and that the royalties distributed by the Board of Directors shall be divided into two (2) equal sums, and one (1) each of such sums credited respectively to and for division amongst (a) the writer members, and (b) the publisher members, in accordance with the system of distribution and classification as determined by the Classification Committee of each group, in accordance with the Articles of Association as they may be amended from time to time, except that the classification of the *Owner* within his class may be changed.

8. The *Owner* agrees that his classification in the *Society* as determined from time to time by the Classification Committee of his group and/or The Board of Directors of the *Society*, in case of appeal by him, shall be final, conclusive and binding upon him.

The *Society* shall have the right to transfer the right of review of any classification from the Board of Directors to any other agency or instrumentality that in its discretion and good judgment it deems best adapted to assuring to the *Society's* membership a just, fair, equitable and accurate classification.

The *Society* shall have the right to adopt from time to time such systems, means, methods and formulae for the establishment of a member's status in respect of classification as will assure a fair, just and equitable distribution of royalties among the membership.

9. **"Public Performance" Defined.** The term *"public performance"* shall be construed to mean vocal, instrumental and/or mechanical renditions and representations in any manner or by any method whatsoever, including transmissions by radio and television broadcasting stations, transmission by telephony and/or "wired wireless"; and/or reproductions of performances and renditions by means of devices for reproducing sound recorded in synchronism or timed relation with the taking of motion pictures.

10. **"Musical Works" Defined.** The phrase *"musical works"* shall be construed to mean musical compositions and dramatico-musical compositions, the words and music thereof, and the respective arrangements thereof, and the selections therefrom.

11. The powers, rights, authorities and privileges by this instrument vested in the *Society*, are deemed to include the World, provided, however, that such grant of rights for foreign countries shall be subject to any agreements now in effect, a list of which are noted on the reverse side hereof.

12. The grant made herein by the owner is modified by and subject to the provisions of (a) the Amended Final Judgment (Civil Action No. 13-95) dated March 14, 1950 in U. S. A. v. ASCAP as further amended by Order dated January 7, 1960, (b) the Final Judgment (Civil Action No. 42-245) in U. S. A. v. ASCAP, dated March 14, 1950, and (c) the provisions of the Articles of Association and resolutions of the Board of Directors adopted pursuant to such judgments and order.

SIGNED, SEALED AND DELIVERED, on this ..... day of ....., 19.....

Owner .....

.....

Society AMERICAN SOCIETY OF COMPOSERS, AUTHORS AND PUBLISHERS,

By .....
President

FOREIGN AGREEMENTS AT THIS DATE IN EFFECT

E 23

(See paragraph 11 of the within agreement)

COUNTRY	WITH (Name of Firm)	EXPIRES	REMARKS

CBS v. ASCAP

CX 2, Exhibit No. 3

Standard forms of ASCAP "Application for Writer-Membership", Form 4M 11-71, with attached form of cover letter, and "Application for Publisher Membership", Form 2M 6-71, with attached form of cover letter.

AREA CODE 212 595-3050

E 25
CABLE ADDRESS ASCAP, NEW YORK

AMERICAN SOCIETY OF COMPOSERS, AUTHORS AND PUBLISHERS
ONE LINCOLN PLAZA
NEW YORK, N.Y. 10023

Dear Sir or Madam:

In accordance with your request, we are enclosing an application for writer membership in the Society.

Composers and authors may join ASCAP as either associate or full members. I would like to tell you something about each type of membership so that you may correctly fill out your application.

Full membership in ASCAP is available to any composer or author who has had at least one original work commercially published or recorded. As a full member, you will receive royalties for performances of any of your compositions included in the ASCAP sample survey; membership dues for full members are $10.00 a year. If your works do appear in the Society's survey during any survey year you will also have the right to vote in the Society elections in the succeeding year and thereby participate in the governing and operations of the Society.

If you are the composer or author of a copyrighted musical composition which has not been commercially recorded or published, you can join the Society as an associate member. As an associate member, you will not have to pay any membership dues and, of course, will not have voting rights. You will have your status changed from associate to full member as soon as you have had a composition commercially published or recorded or have had performances in media licensed by the Society.

Please complete and return the application at your earliest convenience, indicating whether you wish to join as an associate or full member, and listing all of your compositions on the reverse side of the application form. If you wish to apply for full membership, it will be necessary for you to send us a commercial recording or sales sheet music copy of one of the compositions listed on the form along with your completed application. If you are applying for associate membership please enclose proof of copyright.

If your application is in order, it will be presented to our Membership Committee and Board of Directors and you will be advised of their action shortly thereafter.

With best wishes for your success as a writer, we are,

Sincerely,

DEC:jr

MEMBERSHIP DEPARTMENT

E 26

APPLICATION FOR WRITER-MEMBERSHIP
IN THE
American Society of Composers, Authors and Publishers

ONE LINCOLN PLAZA, NEW YORK, N. Y. 10023

The undersigned hereby applies for membership as a

	CHECK		CHECK		CHECK
FULL	☐	STANDARD	☐	AUTHOR	☐
ASSOCIATE	☐	POPULAR PRODUCTION	☐	COMPOSER	☐

in the American Society of Composers, Authors and Publishers, agreeing if and when elected to abide and be bound by the Articles of Association thereof, as now in effect or as may be hereafter amended, and to execute such agreements as may then be in force in identical terms as between the Society and its other members.

The following information is submitted in support of this application:

Please print or type:

Full Name: Mr. Mrs. Miss .....

Pseudonyms, if any .....

Born at ..... on ....., 1.....

Citizen of .....

Social Security No. .....

The applicant represents that there is in existence or effect no assignment or license, direct or indirect, of non-dramatic performing rights in or to any of the works listed herein, except as such may have been effected with publishers of the said works or by the assignments or licenses of which true copies are hereto annexed.

Musical works of which applicant is composer or author are listed on the reverse side hereof.

Applicant has read the Articles of Association of the American Society of Composers, Authors and Publishers and makes this application with full knowledge of the contents thereof.

Dated at ....., 19

Proposed by .....

Seconded by .....

.....
Signature of Applicant

.....
Street and Number

.....
City and State

.....
Telephone

DO NOT FILL IN THESE SPACES

Rec'd ....., 19....

Subm't'd. ....., 19....

Action .....

By .....

(NOTE: An applicant is not required to have his application proposed and seconded. Be sure to keep the Society advised of changes in address and telephone. Also notify Society of all numbers published subsequent to the filing of this application.)

(OVER)

LIST OF WORKS

TITLE	YEAR PUBLISHED	AUTHOR	COMPOSER	PUBLISHER

AREA CODE 212 595-3050

E 28

CABLE ADDRESS ASCAP, NEW YORK

AMERICAN SOCIETY OF COMPOSERS, AUTHORS AND PUBLISHERS
ONE LINCOLN PLAZA
NEW YORK, N.Y. 10023

In accordance with your request, we are enclosing an application for publisher membership.

It is necessary that we receive either regular piano sales copy, orchestration or commercial recording of at least one of the publications listed on the attached schedule.

PLEASE NOTE: If the applicant is a corporation the application must be signed by an officer of the corporation and his corporate title indicated. If the applicant is a partnership the application must be signed by a partner. If the applicant is an individual ownership the application must be signed by the owner.

A division of a corporation is not eligible for membership as such. The application must be made in the name of the corporation, for example, XYZ CORPORATION (ABC Music Division).

Should it be necessary to correct any of the information you have supplied on the application form, each correction must be initialed by the person signing the application.

Sincerely yours

MEMBERSHIP DEPARTMENT

DC:eb
Enclosure

E 29

Application for Publisher-Membership
IN THE
American Society of Composers, Authors and Publishers
One Lincoln Plaza, New York, N. Y. 10023

The undersigned hereby applies for membership, as a Music Publisher, in the American Society of Composers, Authors and Publishers, agreeing if and when elected to abide and be bound by the Articles of Association thereof, as now in effect, or as may be hereafter amended, and to execute such agreements as may then be in force in identical terms as between the said Society and its other members.

The following information is submitted in support of this application:
(Please Print)

1. Firm Name

2. Address
Street and Number City State

3. Corporation, Partnership or Individual Ownership?

4. Social security number of each partner, or individual owner: .....

5. If Incorporated, in What State? Date of Charter

6. Authorized Capital $ Amount Issued $

7. Names of All Officers and Stockholders:

President Secretary

Vice-President Treasurer

STOCKHOLDERS

8. If Partnership, Names of Partners:

9. Year in Which Business Was Established:

10. Cities in Which Branch Offices Are Regularly Maintained:

11. No. of Employees: Prof. Dept. Other Depts. Total

12. Number of Domestic Copyrighted Musical Compositions Owned by Applicant As of This Date:

Popular Production Standard

Religious Educational Miscellaneous

Copyrighted Arrangements of Non-Copyrights Total

13. Foreign Copyrights of Which Performing Rights for the U.S.A. Are Owned:

Total Number Countries Represented

Applicant has read the Articles of Association of the American Society of Composers, Authors and Publishers and makes this application with full knowledge of the contents thereof.

.....
Firm Name

By .....

Title .....

Date at , 19

NOTE: An applicant is not required to have application proposed and seconded. Be sure to keep the Society advised of changes in address and telephone. Also notify Society of all numbers published subsequent to the filing of this application.

Proposed by:	Seconded by:

DO NOT FILL IN BELOW

Received:	Presented:	Recommended by Membership Committee
		For ..... Date .....

2M 6-71

American Society of Composers,
Authors and Publishers
One Lincoln Plaza
New York, N. Y., 10023

Gentlemen:

The applicant makes the following representations:

1. Schedule A hereto annexed is a true and correct list of the domestic copyrighted musical compositions owned by the applicant as of this date.

2. Schedule B hereto annexed is a true and correct list of the foreign copyright of which performing rights for the United States are owned by the applicant (showing in each case the countries represented by applicant).

Applicant hereby represents that there is in existence or effect no assignment or license, direct or indirect, of the performing rights in or to any of the compositions listed on said Schedules A and B except as such may have been effected by the assignments or licenses of which true copies are hereto annexed.

Applicant

By Title

E 31

American Society of Composers,
Authors and Publishers
One Lincoln Plaza
New York, N. Y., 10023

Gentlemen:

The applicant makes the following representations:

1. Schedule A hereto annexed is a true and correct list of the domestic copyrighted musical compositions owned by the applicant as of this date.

2. Schedule B hereto annexed is a true and correct list of the foreign copyright of which performing rights for the United States are owned by the applicant (showing in each case the countries represented by applicant).

Applicant hereby represents that there is in existence or effect no assignment or license, direct or indirect, of the performing rights in or to any of the compositions listed on said Schedules A and B except as such may have been effected by the assignments or licenses of which true copies are hereto annexed.

Applicant

By Title

197

SCHEDULE A

List of Domestic Copyrighted Musical Compositions Owned by the Applicant

TITLE	YEAR OF COPYRIGHT	COMPOSER	AUTHOR	PUBLISHER (If not originally published by Applicant)

NOTE: For works based on compositions in the public domain, the title, author and composer of public domain source must be indicated.

SCHEDULE A

List of Domestic Copyrighted Musical Compositions Owned by the Applicant

TITLE	YEAR OF COPYRIGHT	COMPOSER	AUTHOR	PUBLISHER (If not originally published by Applicant)

NOTE: For works based on compositions in the public domain, the title, author and composer of public domain source must be indicated.

E 33

SCHEDULE B

List of Foreign Copyrights of which performing Rights for the United States are owned by Applicant.

(Please indicate in each case the countries represented by applicant.)

SCHEDULE B

List of Foreign Copyrights of which performing Rights for the United States are owned by Applicant.

(Please indicate in each case the countries represented by applicant.)

CBS v. ASCAP

CX 2, Exhibit No. 4

Standard form of ASCAP writer and publisher membership agreement, Form 2500 7-65, covering the years 1941-1965.

1941 - 1965

No. E 37

Rec'd

Agreement Between

AND

American Society

OF

Composers, Authors & Publishers

575 MADISON AVENUE

NEW YORK 22, N. Y.

DATED:

AGREEMENT made between the Undersigned (for brevity called "*Owner*") and the AMERICAN SOCIETY OF COMPOSERS, AUTHORS AND PUBLISHERS (for brevity called "*Society*"), in consideration of the premises and of the mutual covenants hereinafter contained, as follows:

The *Owner* sells, assigns, transfers and sets over unto the *Society* for the term hereof, the right of public performance (as hereinafter defined), in each musical work:

Of which the *Owner* is a copyright proprietor; or

Which the *Owner*, alone, or jointly, or in collaboration with others, wrote, composed, published, acquired or owned; or

In which the *Owner* now has any right, title, interest or control whatsoever, in whole or in part; or

Which hereafter, during the term hereof, may be written, composed, acquired, owned, published or copyrighted by the *Owner*, alone, jointly or in collaboration with others; or

In which the *Owner* may hereafter, during the term hereof, have any right, title, interest or control, whatsoever, in whole or in part.

The right of public performance in every such musical work shall be deemed assigned to the *Society* by this instrument and shall vest in and be the absolute property of the Society for the term hereof, immediately upon the work being written, composed, acquired, owned, published or copyrighted.

The rights hereby assigned shall include:

(a) All the rights and remedies for enforcing the copyright or copyrights of such musical works, whether such copyrights are in the name of the *Owner* and/or others, as well as the right to sue under such copyrights in the name of the *Society* and/or in the name of the *Owner* and/or others, to the end that the *Society* may effectively protect and be assured of all the rights hereby assigned.

(b) The exclusive right of public performance of the separate numbers, songs, fragments or arrangements, melodies or selections forming part or parts of musical plays and dramatico-musical compositions, the *Owner* reserving and excepting from this assignment the right of performance of musical plays and dramatico-musical compositions in their entirety, or any part of such plays or dramatico-musical compositions on the legitimate stage.

(c) The right of public performance by means of radio broadcasting, telephony, "wired wireless," all forms of synchronism with motion pictures, and/or any method of transmitting sound; Provided, however, that the *Owner* shall have the right, in good faith, by written notice to the *Society*, to restrict, limit or prohibit the public performance by radio broadcasting of works the copyright of which is vested in the *Owner*, and the *Society* agrees that all licenses by it issued shall contain a provision reserving its right to restrict or limit, or to prohibit entirely, the performance by broadcasting of any works in its repertory; and Provided further, that if the *Owner* notify the *Society* in writing to restrict, limit or prohibit the public performance of such copyrighted work, the *Owner* shall not, by the service of such notice, become repossessed of any of the rights transferred to the *Society* by this assignment.

2. The term of this agreement shall be for a period commencing on the date hereof and expiring on the 31st day of December, 1965.

3. The *Society* agrees, during the term hereof, in good faith to use its best endeavors to promote and carry out the objects for which it was organized, and to hold and apply all royalties, profits, benefits and advantages arising from the exploitation of the rights assigned to it by its several members, including the *Owner*, to the uses and purposes as provided in its Articles of Association (to which reference is hereby made), as now in force or as hereafter amended.

4. The *Owner* hereby irrevocably, during the term hereof, authorizes, empowers and vests in the *Society* the right to enforce and protect such rights of public performance under any and all copyrights, whether standing in the name of the *Owner* and/or others, in any and all works copyrighted by the *Owner*, and/or by others; to prevent the infringement thereof, to litigate, collect and receipt for damages arising from infringement, and in its sole judgment to join the *Owner* and/or others in whose names the copyright may stand, as parties plaintiff or defendants in suits or proceedings; to bring suit in the name of the *Owner* and/or in the name of the *Society*, or others in whose name the copyright may stand, or otherwise, and to release, compromise, or refer to arbitration any actions, in the same manner and to the same extent and to all intents and purposes as the *Owner* might or could do, had this instrument not been made.

5. The *Owner* hereby makes, constitutes and appoints the *Society*, or its successor, the *Owner's* true and lawful attorney, irrevocably during the term hereof, and in the name of the *Society* or its successor, or in the name of the *Owner*, or otherwise, to do all acts, take all proceedings, execute, acknowledge and deliver any and all instruments, papers, documents, process and pleadings that may be necessary, proper or expedient to restrain infringements and recover damages in respect to or for the infringement or other violation of the rights of public performance in such works, and to discontinue, compromise or refer to arbitration any such proceedings or actions, or to make any other disposition of the differences in relation to the premises.

6. The *Owner* agrees from time to time, to execute, acknowledge and deliver to the *Society* such assurances, powers of attorney or other authorizations or instruments as the *Society* may deem necessary or expedient to enable it to exercise, enjoy and enforce, in its own name or otherwise, all rights and remedies aforesaid.

7. It is mutually agreed that during the term hereof the Board of Directors of the *Society* shall be composed of an equal number of writers and publishers respectively, and that the royalties distributed by the Board of Directors shall be divided into two (2) equal sums, and one (1) each of such sums credited respectively to and for division amongst (a) the writer members, and (b) the publisher members, in accordance with the system of distribution and classification as determined by the Classification Committee of each group, in accordance with the Articles of Association as they may be amended from time to time, except that the classification of the *Owner* within his class may be changed.

8. The *Owner* agrees that his classification in the *Society* as determined from time to time by the Classification Committee of his group and/or the Board of Directors of the *Society*, in case of appeal by him, shall be final, conclusive and binding upon him.

The *Society* shall have the right to transfer the right of review of any classification from the Board of Directors to any other agency or instrumentality that in its discretion and good judgment it deems best adapted to assuring to the *Society's* membership a just, fair, equitable and accurate classification.

The *Society* shall have the right to adopt from time to time such systems, means, methods and formulae for the establishment of a member's status in respect of classification as will assure a fair, just and equitable distribution of royalties among the membership.

9. **"Public Performance" Defined.** The term "*public performance*" shall be construed to mean vocal, instrumental and/or mechanical renditions and representations in any manner or by any method whatsoever, including transmissions by radio broadcasting stations, transmission by telephony and/or "wired wireless" and/or reproductions of performances and renditions by means of devices for reproducing sound records in synchronism or timed relation with the taking of motion pictures.

10. **"Musical Works" Defined.** The phrase "*musical works*" shall be construed to mean musical compositions and dramatico-musical compositions, the words and music thereof, and the respective arrangements thereof, and the selections therefrom.

11. The powers, rights, authorities and privileges by this instrument vested in the *Society*, are deemed to include the World, provided, however, that such grant of rights for foreign countries shall be subject to any agreements now in effect, a list of which are noted on the reverse side hereof.

SIGNED, SEALED AND DELIVERED, on this.....day of....., 19...

Owner .....

.....

The grant made herein by the owner is modified by and subject to the provisions of (a) the Amended Final Judgment (Civil Action No. 13-95) dated March 14, 1950 in U. S. A. v ASCAP as further amended by Order dated January 7, 1960, (b) the Final Judgment (Civil Action No. 42-245) in U. S. A. v ASCAP, dated March 14, 1950, and (c) the provisions of the Articles of Association and resolutions of the Board of Directors adopted pursuant to such judgments and order.

Society AMERICAN SOCIETY OF COMPOSERS, AUTHORS AND PUBLISHERS,

By .....
Secretary

FOREIGN AGREEMENTS AT THIS DATE IN EFFECT

F 40

(See paragraph 11 of the within agreement)

COUNTRY	WITH (Name of Firm)	EXPIRES	REMARKS

CBS v. ASCAP

CX 2, Exhibit No. 5

Form of ASCAP "Television Performing Rights Agreement", supplementing the membership agreement (CX 2, Ex. 4) to include television performing rights.

TELEVISION PERFORMING RIGHTS AGREEMENT

E 42

American Society of Composers,
Authors and Publishers
575 Madison Avenue
New York 22, N.Y.

Gentlemen:

The following shall supplement the outstanding agreements between us and shall be deemed to be part and parcel thereof:-

FIRST: The undersigned (hereinafter called the "Owner") grants to the American Society of Composers, Authors and Publishers (hereinafter called the "Society") the right to license non-dramatic performances by television broadcasting of each musical work of the Owner.

SECOND: A. This grant does not extend to or include the right to license the public performance by television broadcasting or otherwise of any rendition or performance of (a) any opera, operetta, musical comedy, play or like production, such, in whole or in part, or (b) any composition from any opera, operetta, musical comedy, play or like production (whether or not such opera, operetta, musical comedy, play or like production was presented on the stage or in motion picture form) in a manner which recreates the performance of such composition with substantially such distinctive scenery or costume as was used in the presentation of such opera, operetta, musical comedy, play or like production (whether or not such opera, operetta, musical comedy, play or like production was presented on the stage or in motion picture form): provided, however, that the rights hereby granted shall be deemed to include a grant of the right to license non-dramatic performances of compositions by television broadcasting of a motion picture containing such composition if the rights in such motion picture other than those granted hereby have been obtained from the parties in interest.

B. Nothing herein contained shall be deemed to grant the right to license the public performance by television broadcasting of dramatic performances. Any performance of a separate musical composition which is not a dramatic performance, as defined herein, shall be deemed to be a non-dramatic performance. For the purposes of this agreement, a dramatic performance shall mean a performance of a musical composition on a television program in which there is a definite plot depicted by action and where the performance of the musical composition is woven into and carries forward the plot and its accompanying action. The use of dialogue to establish a mere program format or the use of any non-dramatic device merely to introduce a performance of a composition shall not be deemed to make such performance dramatic.

C. The definition of the terms "dramatic" and "non-dramatic" performances contained herein are purely for the purposes of this agreement and for the term thereof and shall not be binding upon or prejudicial to any position taken by either of us subsequent to the term hereof or for any purpose other than this agreement.

THIRD: The Owner may at any time and from time to time, in good faith, restrict the television broadcasting of compositions from musical comedies, operas, operettas and motion pictures, or any other composition being excessively broadcast, only for the purpose of preventing harmful effect upon such musical comedies, operas, operettas, motion pictures or compositions, in respect of other interests under the copyrights thereof; provided, however, that the right to grant limited licenses will be given, upon application, as to restricted compositions, if and when the Owner is unable to show reasonable hazards to his or its major interests likely to result from such television broadcasting; and provided further that such right to restrict any

such composition shall not be exercised for the purpose of permitting the fixing or regulating of fees for the recording or transcribing of such composition, and provided further that in no case shall any charges, "free plugs", or other consideration be required in respect of any permission granted to perform a restricted composition; and provided further that in no event shall any composition, after the initial television broadcast thereof, be restricted for the purpose of confining further television broadcasts thereof to a particular artist, station, network or program. The Owner may also at any time and from time to time, in good faith, restrict the television broadcasting of any composition, as to which any suit has been brought or threatened on a claim that such composition infringes a composition not contained in the repertory of Society or on a claim by a non-member of Society (or by member who has not signed an agreement with the Society substantially identical with this agreement), that Society does not have the right to license the public performance of such composition by television broadcasting.

FOURTH: The musical works of the Owner herein embraced are those specified in the agreement between the Owner and the Society, to wit: those of which the Owner is a copyright proprietor; or which the Owner, alone, or jointly, or in collaboration with others, wrote, composed, published, acquired or owned; or in which the Owner now has any right, title, interest or control whatsoever, in whole or in part; or which hereafter, during the term hereof, may be written, composed, acquired, owned, published or copyrighted by the Owner, alone, jointly or in collaboration with others; or in which the Owner may hereafter, during the term hereof, have any right, title, interest or control, whatsoever in whole or in part.

FIFTH: The term of this instrument and the provisions thereof shall be for the period commencing as of the date hereof, and ending December 31, 1966.

The Society's signature underneath the word "ACCEPTED", together with the Owner's signature at the foot hereof, will make this a valid, binding and enforceable agreement between us.

ACCEPTED:

AMERICAN SOCIETY OF COMPOSERS,
AUTHORS AND PUBLISHERS

By _____
President

CBS v. ASCAP

CX 2, Exhibit No. 6

List of "ASCAP Affiliated [Foreign] Repertories", dated 1972.

—1972—

American Society of Composers, Authors and Publishers



AFFILIATED REPERTORIES

SOCIEDAD ARGENTINA DE AUTORES Y COMPOSITORES DE MUSICA (SADAIC)
Buenos Aires, Argentina

AUSTRALASIAN PERFORMING RIGHT ASSOCIATION, LTD. (APRA)
Sydney, Australia

STAATLICH GENEHMIGTE GESELLSCHAFT DER AUTOREN, KOMPONISTEN UND MUSIKVERLEGER (AKM)
Vienna, Austria

SOCIÉTÉ BELGE DES AUTEURS, COMPOSITEURS ET EDITEURS (SABAM)
Brussels, Belgium

UNIÃO BRASILEIRA DE COMPOSITORES (UBC)
Rio de Janeiro, Brazil

COMPOSERS, AUTHORS AND PUBLISHERS ASSOC. OF CANADA, LTD. (CAPAC)
Toronto, Canada

DEPARTAMENTO DEL DERECHO DE AUTOR (DAIC)
Santiago, Chile

OCHRANNY SVAZ AUTORSKY (OSA)
Prague, Czecho Slovakia

SELSKABET TIL FORVALTNING AF INTERNATIONALE KOMPONISTRETTIGHEDER I DANMARK (KODA)
Copenhagen, Denmark

THE PERFORMING RIGHT SOCIETY LIMITED (PRS)
London, England

SÄVELTÄJÄIN TEKIJÄNOIKEUSTOIMISTO TEOSTO (TEOSTO)
Helsinki, Finland

SOCIÉTÉ DES AUTEURS, COMPOSITEURS ET EDITEURS DE MUSIQUE (SACEM)
Paris, France

GESELLSCHAFT FÜR MUSIKALISCHE AUFFÜHRUNGS- UND MECHANISCHE VERVIELFÄLTIGUNGSRECHTE (GEMA)
Berlin, Germany Munich, Germany

SOCIETÉ ANON. HELLÉNIQUE POUR LA PROTECTION DE LA PROPRIÉTÉ INTELLECTUELLE (AEPI)
Athens, Greece

HET BUREAU VOOR MUZIEK-AUTEURSRECHT (BUMA)
Amsterdam, Holland

BUREAU HONGROIS POUR LA PROTECTION DES DROITS D'AUTEUR (ARTISJUS)
Budapest, Hungary

SAMBAND TÓNSKALDA OG EIGENDA FLUTNINGSRETTAR (STEF)
Reykjavik, Iceland

SOCIÉTÉ DES AUTEURS, COMPOSITEURS ET EDITEURS DE MUSIQUE EN ISRAEL ACUM, LTD. (ACUM)
Tel-Aviv, Israel

SOCIETÀ ITALIANA DEGLI AUTORI ED EDITORI (SIAE)
Rome, Italy

THE JAPANESE SOCIETY OF RIGHTS OF AUTHORS AND COMPOSERS (JASRAC)
Tokyo, Japan

SAVEZ KOMPOZITORA JUGOSLAVIJE (SAKOJ)
Belgrade, Jugoslavia

FIKAMBANAN' NY MPANORATRA SY MPAMORON-KIRA ARY EDITORA MALAGASY (FIMMEMA)
Madagascar

SOCIEDAD DE AUTORES Y COMPOSITORES DE MUSICA (SACM)
Mexico, D.F.

NORSK KOMPONISTFORENINGS INTERNASJONALE MUSIKKBYRA (TONO)
Oslo, Norway

AUTORES PARAGUAYOS ASOCIADOS (APA)
Asuncion, Paraguay

ASOCIACIÓN PERUANA DE AUTORES Y COMPOSITORES (APDAYC)
Lima, Peru

FILIPINO SOCIETY OF COMPOSERS, AUTHORS AND PUBLISHERS (FILSCAP)
Manila, Philippines

STOWARZYSZENIE AUTOROW (ZAIKS)
Warsaw, Poland

SOCIEDADE DE ESCRITORES E COMPOSITORES TEATRAIS PORTUGUESES (SECTP)
Lisbon, Portugal

SOCIEDAD PUERTORRIQUEÑA DE AUTORES, COMPOSITORES Y EDITORES DE MUSICA (SPACEM)
Santurce, Puerto Rico

SOUTH AFRICAN MUSIC RIGHTS ORGANIZATION LIMITED (SAMRO)
Johannesburg, South Africa

SOCIEDAD GENERAL DE AUTORES DE ESPAÑA (SGAE)
Madrid, Spain

SOCIÉTÉ SUÉDOISE DES COMPOSITEURS, AUTEURS ET EDITEURS DE MUSIQUE (STIM)
Stockholm, Sweden

SOCIÉTÉ SUISSE DES AUTEURS ET EDITEURS (SUISA)
Zurich, Switzerland

ASOCIACION GENERAL DE AUTORES DEL URUGUAY (AGADU)
Montevideo, Uruguay

CBS v. ASCAP

CX 2, Exhibit No. 7

Form of ASCAP Perform ng Rights Agreement used in connection with the foreign performing rights licensing societies listed in CX 2, Ex. 6 above, wherein ASCAP grants rights to licensee.

E 47

AGREEMENT made this day of

One thousand nine hundred and between

(hereinafter designated as), of

and AMERICAN SOCIETY OF COMPOSERS,

AUTHORS AND PUBLISHERS (hereinafter designated as "ASCAP"), 575 Madison Avenue, New York 22, New York, United States of America, as follows:

MANDATE AND TERRITORY

I

ASCAP hereby grants to the non-exclusive right to license in

the non-dramatic public performance of musical works the performing rights of which are now or may during the term hereof be vested in or controlled by ASCAP for said territory to the extent that the right of public performance in such works is or may during the term hereof be or become vested in or assigned to ASCAP by its members, pursuant to its Articles of Association and Rules, such works being hereinafter called the "ASCAP repertoire". There shall be excluded from said grant, however, such musical works or such rights therein as (1) are at present licensed for said territory to third parties under existing contracts, a list of which is hereto attached as Schedule "A", or (2) may be licensed in the future for said territory to third parties. In the event of such licensing in the future, ASCAP shall give prompt written notice thereof to

II

The term "public performance" wherever used in this agreement, shall be construed to mean vocal, instrumental and/or musical performances and representations in any manner or by any method whatever, including performance by radio broadcasting stations, telephony and/or "wired wireless", and/or reproductions of non-dramatic performances by means of devices for reproducing sound recorded in synchronization or timed relation with motion pictures; provided, however, that in the case of dramatico-musical works, musical plays, operas, operettas, musical comedies and works of a similar character, such performances shall be limited to the separate numbers, fragments or arrangements, melodies or selections forming a part or parts thereof, and shall not include the right of public performance of such works in their entirety or of any part thereof as stage plays or as a part of stage plays, all of which rights including all other rights not in this agreement expressly enumerated are reserved and retained to their members by ASCAP and by the respective composers, authors and publishers of such musical works.

Television rights shall be deemed included in the grant under Clause 1 hereof, but only to the extent that ASCAP has obtained or may hereafter obtain such rights from its members.

III

agrees to require of and collect from its licensees, for the public performance of the musical works referred to in Clause I hereof, payment upon the same basis and in the same manner as it does for its own members, and will account for and pay over to ASCAP such moneys in respect of the public performance of such musical works as hereinafter provided.

DISTRIBUTION OF FEES

IV

shall render accountings and make payments to ASCAP for each calendar year, or part thereof, during the term hereof on or before each succeeding the close thereof.

V

The net sum allocable by in respect of performances of the musical works in the ASCAP repertoire shall be ascertained in accordance with the present practice of , as set forth in the attached "Schedule of Distribution Rules of (pursuant to ASCAP- agreement)", or any modification thereof which may be made from time to time, and shall be divided and paid in the following manner:

1. Not less than one-half of the sum in respect of each work shall be the share of the writers (composers and authors) thereof. The shares of such writers as are members of ASCAP shall be paid by to ASCAP. It is understood and agreed that no arranger-share shall be provided for arrangements of copyright works.

2. The remaining portion of the sum in respect of each work shall be the share of the publisher who owns the copyright for or has an interest in the performing rights for, the territory defined in Clause I hereof unless has notice of any agreement between the ASCAP and publishers concerned providing for the apportionment of such publisher-share, in which event shall pay the publisher his part of the publisher-share and shall pay to ASCAP the ASCAP publisher's part thereof, in accordance with any such agreement between such publishers. In the case of ASCAP

publishers who have not assigned such copyright or granted any such interest in the performing rights to a publisher, the full publisher-share shall be paid to ASCAP unless has notice of any agreement between such respective publishers providing for the apportionment of such publisher-share, in which event shall pay the publisher his part of the publisher-share, and shall pay to ASCAP the ASCAP publisher's part thereof, in accordance with any such agreement between such publishers.

3. The payments by under this Clause V shall be accompanied by detailed distribution statements enabling ASCAP to allocate to each member interest the share of the fees due to him, including a list of the works performed according to the returns received from licensees surveyed by in determining distributions to its own members, showing the amounts and the share allocated in respect of each work, and shall be subject to deduction therefrom of such sums as may be assessed against them on account of taxes payable to the Government.

VI

If gives its own publisher members credit for performances of their editions of works written or composed by members of ASCAP, but which though protected in the country of such writer member are in the public domain in such publisher's country, then ASCAP shall be given a credit for such work equal to that given to such publisher.

RIGHT TO REMOVE WORKS

VII

ASCAP grants to the rights and licenses set forth in Clause I hereof, subject always, however, to any right of the author, composer and publisher of any musical work to remove any musical work from the ASCAP

repertoire and/or to revoke, modify or limit any performing right which they may have granted to ASCAP for the following purposes only:

(a) To prevent the performance of musical works before the authorized publication (edition) of the works in the territory described in Clause I hereof as the case may be; and

(b) To prevent the performance by radio broadcasting or television of the separate numbers, fragments or arrangements, melodies or selections forming a part or parts of dramatico-musical works, musical plays, operas, operettas, musical comedies and works of a similar character, prior to the first authorized public presentation of such dramatico-musical works, musical plays, operas, operettas, musical comedies and works of a similar character and for a reasonable period thereafter during the run-of-the-play in the largest city in such territory.

In the event of any such removal, revocation, modification or limitation, ASCAP shall give to immediate written notice thereof.

ASCAP represents that it is authorized to enter into this contract and to grant the rights defined in Clause I hereof.

POWERS OF ATTORNEY - FURTHER ASSURANCES

VIII

ASCAP irrevocably during the term of this agreement authorizes, empowers and vests in the right, in the name of the grantor or in the name of the grantee, or in the name of the owner of the copyright or copyrights of any musical work coming within the purview of this agreement to institute and prosecute actions to retain and recover damages for the infringement or violation of the rights granted to the grantee under this agreement, and to

release, compromise or refer to arbitration, in the grantee's discretion, any and all actions in the same manner and to the same extent and to all intents and purposes as the grantor and/or the owners of the copyright of such musical work might or could do. And ASCAP hereby makes, constitutes and appoints its true and lawful attorney irrevocably during the term of this agreement, in the name of the grantor or in the name of the grantee, or in the name of the owner of the copyright or copyrights of any musical work, to do all acts, take all proceedings and execute, acknowledge and deliver any and all instruments and documents that may be necessary, proper or expedient and recover damages, under the copyright of such musical works or otherwise, for the infringement or other violation of the rights hereby granted in such works, and to release, compromise and refer to arbitration any such proceedings or actions or to make any other dispositions of differences in relation to the premises.

IX

ASCAP shall supply as far as possible with any particulars relating to the musical works in its repertoire which may be necessary.

X

ASCAP agrees, during the term thereof, to execute, acknowledge and deliver to such assurances, powers of attorney or other authorities or instruments as may be deemed necessary or expedient by to enable it to exercise and enforce in its own name, or otherwise, all the rights, remedies and privileges granted to it under this agreement.

MISCELLANEOUS

XI

ASCAP shall have the right to appoint in writing a representative to take up in its behalf and examine into, during customary business hours, any matter arising in respect of the relations covered by this agreement.

XII

In the event that shall change the Distribution Rules used by it in ascertaining the net sum allocable by it in respect of the musical works in the repertoire of ASCAP (as set forth in the attached Schedule of Distribution Rules referred to in Clause V of this Agreement), then shall promptly notify ASCAP of the nature of such change in Distribution Rules and shall send to ASCAP a schedule of the new system of distribution.

In determining the proportion of credits in the symphonic and concert field to be allocated to writer and publisher-members of ASCAP, the provisions of sub-paragraphs 1 and 2 of Clause V shall apply, it being understood and agreed, however, that in respect of any works in the ASCAP repertoire, the writer-share shall include the share of writers who are not members of any performing right society as well as the share of ASCAP writers.

AGREEMENT IS NOT ASSIGNABLE

XIII

This agreement is declared to be personal with respect to each of the parties hereto, and neither party shall assign the same or any rights therein granted or arising therefrom without the written consent of the other party first had and obtained, except insofar as shall have the right to issue licenses for the giving of public performances of the musical works contained in the ASCAP repertoire, nor shall this agreement be deemed to be assignable by operation of law, devolution or legal proceedings.

TERM OF AGREEMENT

XIV

This agreement shall be effective as of

and shall continue until

XV

It is agreed that this document contains the full and entire understanding and agreement between the parties hereto.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be signed by their respective duly authorized representatives and their respective seals hereunto affixed the day and year first above written.

AMERICAN SOCIETY OF COMPOSERS,
AUTHORS AND PUBLISHERS

By_____

Witness

_____

By_____

Witness

_____

SCHEDULE "A"

Title of Composition	Composer and Author	Publisher
NONE		

CBS v. ASCAP

CX 2, Exhibit No. 8

Form of ASCAP Performing Rights Agreement used in connection with the foreign performing rights licensing societies listed in CX 2, Ex. 6 above, wherein licensor grants rights to ASCAP.

E 57

AGREEMENT made this day of

One thousand nine hundred and between

(hereinafter designated as), of

and AMERICAN SOCIETY OF COMPOSERS, AUTHORS AND PUBLISHERS (hereinafter designated as "ASCAP"), of 575 Madison Avenue, New York, New York 10022, United States of America, as follows:

MANDATE AND TERRITORY

I

hereby grants to ASCAP the non-exclusive right to license in the United States of America (including the Virgin Islands), Puerto Rico and the Philippines, the non-dramatic public performance of musical works the performing rights of which are now or may during the term hereof be vested in or controlled by for said territory to the extent that the right of public performance in such works is or may during the term hereof be or become vested in or assigned to by its members, pursuant to its Articles of Association and Rules, such works being hereinafter called the repertoire". There shall be excluded from said grant, however, such musical works or such rights therein as (1) are at present licensed for said territory to third parties under existing contracts, a list of which is hereto attached as Schedule "A", or (2) may be licensed in the future for said territory to third parties. In the event of such licensing in the future, shall give prompt written notice thereof to ASCAP.

II

The term "public performance" wherever used in this agreement, shall be construed to mean vocal, instrumental and/or musical performances and representations in any manner or by any method whatever, including performance by radio broadcasting stations, telephony and/or "wired wireless", and/or reproductions of non-dramatic performances by means of devices for reproducing sound recorded in synchronization or timed relation with motion pictures; provided, however, that in the case of dramatico-musical works, musical plays, operas, operettas, musical comedies and works of a similar character, such performances shall be limited to the separate numbers, fragments or arrangements, melodies or selections forming a part or parts thereof, and shall not include the right of public performance of such works in their entirety or of any part thereof as stage plays or as a part of stage plays, all of which rights including all other rights not in this agreement expressly enumerated, are reserved and retained to their members by and by the respective composers, authors and publishers of such musical works.

Television rights shall be deemed included in the grant under Clause I hereof, but only to the extent that has obtained or may hereafter obtain such rights from its members.

III

ASCAP agrees to require of and collect from its licensees, for the public performance of the musical works referred to in Clause I hereof, payment upon the same basis and in the same manner as it does for its own members, and will account for and pay over to such monies in respect of the public performance of such musical works as hereinafter provided.

DISTRIBUTION OF FEES

IV

ASCAP shall render accountings and make payment to for each calendar year, or part thereof during the term hereof on or before each succeeding the close thereof.

V

A. The net sum allocable by ASCAP in respect of performances of the musical works in the repertoire in the fields other than the symphonic and concert field (as defined in paragraph "B" of this Clause V) shall be ascertained in accordance with the present scale of points used by ASCAP in allocating performance credits to its publisher members, as set forth in the attached "Schedule of Distribution Rules of ASCAP (pursuant to ASCAP/ agreement)", or any modification thereof which may be made from time to time, and the amount due to from ASCAP for each accounting period shall bear exactly the same proportion to ASCAP's net distributable revenue as the total credits on the said point scale for performances of works in the repertoire bear to the total credits on the said point scale for performances of all works in the repertoires of ASCAP and affiliated societies, and the amount so due to shall be

divided and paid in the following manner:

1. One-half of the sum in respect of each work shall be the share of the writers (composers and authors) thereof. The shares of such writers as are members of shall be paid by ASCAP to It is understood and agreed that no arranger-share shall be provided for arrangements of copyright works.

2. The remaining half of the sum in respect of each work shall be the share of the ASCAP publisher who owns the copyright for, or has an interest in the performing rights for, the territory defined in Clause I hereof unless ASCAP has notice of any agreement between the and ASCAP publishers concerned providing for the apportionment of such publisher-share, in which event ASCAP shall pay the ASCAP publisher his part of the publisher-share, and shall pay to the publisher's part thereof, in accordance with any such agreement between such publishers. In the case of publishers who have not assigned such copyright or granted any such interest in the performing rights to an ASCAP publisher, the full publisher-share shall be paid to unless ASCAP has notice of any agreement between such respective publishers providing for the apportionment of such publisher-share, in which event ASCAP shall pay the ASCAP publisher his part of the publisher-share, and shall pay to the publisher's part thereof, in accordance with any such agreement between such publishers.

3. The payments by ASCAP under Paragraph "A" of this Clause V shall be accompanied by detailed distribution statements enabling to allocate to each member interested the share of the fees due to him, including a list of the works performed according to the returns received

from ASCAP licensees surveyed by ASCAP in determining distributions to its own members, showing the amounts and the share allocated in respect of each work, and shall be subject to deduction therefrom of such sums as may be assessed against them on account of taxes payable to the Federal, State or Municipal Government.

B. The net sum allocable by ASCAP in respect of performances of the musical works in the repertoire in the symphonic and concert field (that is in auditoriums in which performances by symphony orchestras, concerts and recitals are given, but excluding radio broadcasting studios and stations) shall be ascertained, and shall be divided and paid in the following manner:

1. ASCAP agrees to prepare from the programme data furnished by its licensees in the symphonic and concert field as defined above a summary of all performances of works in the repertoires of ASCAP and affiliated societies appearing on such programmes for the purpose of apportioning payments to as set forth in sub-paragraph "2" of this Paragraph "B". ASCAP also agrees to furnish to a yearly summary which will show the works identifiable in such programmes as works in the repertoire and the amounts and the share allocated in respect of each work.

2. From the total number of performances of works in the ASCAP repertoire and affiliated societies rendered by licensees in said symphonic and concert field, as shown in the summary prepared pursuant to sub-paragraph "1" of this paragraph "B", there shall be computed the proportion thereof contributed by the repertoire, and the amount due to from ASCAP each year shall bear exactly the same proportion to the

total amount collected from ASCAP's licensees in this field for the same year as the number of such performance credits of works in the repertoire bears to the total number of such performance credits of all works in the repertoires of ASCAP and affiliated societies.

3. Within months of the close of each year during the term of this agreement ASCAP shall furnish to the statements provided for in sub-paragraphs "1" and "2" of this paragraph "B" accompanied by remittance of such amount as shall be shown as due to after deducting only such amount as may be assessed on account of taxes payable to the Federal, State or Municipal Government.

VI

If ASCAP gives its own publisher members credit for performances of their editions of works written or composed by members of , but which though protected in the country of such writer member are in the public domain in such publisher's country, then shall be given a credit for such work equal to that given to such publisher.

RIGHT TO REMOVE WORKS

VII

grants to ASCAP the rights and licenses set forth in Clause I hereof, subject always, however, to any right of the author, composer and publisher of any musical work to remove any musical work from the repertoire and/or to revoke, modify or limit any performing right which they may have granted to for the following purposes only:

(a) To prevent the performance of musical works before the authorized publication (edition) of the works in the territory described in Clause I hereof, as the case may be;

(b) To prevent the performance by radio broadcasting or television of the separate numbers, fragments or arrangements, melodies or selections forming a part or parts of dramatico-musical works, musical plays, operas, operettas, musical comedies and works of a similar character, prior to the first authorized public presentation of such dramatico-musical works, musical plays, operas, operettas, musical comedies and works of a similar character and for a reasonable period thereafter during the run-of-the-play in the largest city in such territory.

In the event of any such removal, revocation, modification or limitation, shall give to ASCAP immediate written notice thereof.

represents that it is authorized to enter into this contract and to grant the rights defined in Clause I hereof.

POWERS OF ATTORNEY - FURTHER ASSURANCES

VIII

irrevocably during the term of this agreement authorizes, empowers and vests in ASCAP the right, in the name of the grantor or in the name of the grantee, or in the name of the owner of the copyright or copyrights of any musical work coming within the purview of this agreement to institute and prosecute actions to retain and recover damages for the infringement or violation of the rights granted to the grantee under this agreement, and to release, compromise or refer to arbitration, in the grantee's discretion, any and all actions in the same manner and to the same extent and to all intents and purposes as the grantor and/or the owners of the copyright of such musical work might or could do. And hereby makes, constitutes and appoints ASCAP its true and lawful attorney irrevocably during the term of this agreement, in the name of the grantor or in the name of the

grantee, or in the name of the owner of the copyright or copyrights of any musical work, to do all acts, take all proceedings and execute, acknowledge and deliver any and all instruments and documents that may be necessary, proper or expedient and recover damages, under the copyright of such musical works or otherwise, for the infringement or other violation of the rights hereby granted in such works, and to release, compromise and refer to arbitration any such proceedings or actions or to make any other dispositions of differences in relation to the premises.

IX

shall supply ASCAP as far as possible with any particulars relating to the musical works in its repertoire which may be necessary.

X

agrees, during the term hereof, to execute, acknowledge and deliver to ASCAP such assurances, powers of attorney or other authorities or instruments as may be deemed necessary or expedient by ASCAP to enable it to exercise and enforce in its own name, or otherwise, all the rights, remedies and privileges granted to it under this agreement.

MISCELLANEOUS

XI

shall have the right to appoint in writing a representative to take up in its behalf and examine into, during customary business hours, any matter arising in respect of the relations covered by this agreement.

XII

In the event that ASCAP shall change the Distribution Rules used by it in ascertaining the net sum allocable by it in respect of the musical works in the repertoire of (as set forth in the respective

attached "Schedules of Distribution Rules " referred to in Clause V of this agreement), then ASCAP shall promptly notify of the nature of such change in Distribution Rules and shall send to a schedule of the new system of distribution.

In determining the proportion of credits in the symphonic and concert field to be allocated to writer and publisher-members of the provisions of sub-paragraphs 1 and 2 of paragraph A of Clause V shall apply, it being understood and agreed, however, that in respect of any works in the repertoire, the writer-share shall include the share of writers who are not members of any performing right society as well as the share of writers.

AGREEMENT IS NOT ASSIGNABLE

XIII

This agreement is declared to be personal with respect to each of the parties hereto, and neither party shall assign the same or any rights therein granted or arising therefrom without the written consent of the other party first had and obtained, except insofar as ASCAP shall have the right to issue licenses for the giving of public performances of the musical works contained in the repertoire, nor shall this agreement be deemed to be assignable by operation of law, devolution or legal proceedings.

TERM OF AGREEMENT

XIV

This agreement shall be effective as of and shall continue until

XV

It is agreed that this document contains the full and entire understanding and agreement between the parties hereto.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be signed by their respective duly authorized representatives and their respective seals hereunto affixed the day and year first above written.

By_____

Witness

_____

By_____

Witness

_____

SCHEDULE "A"

E 67

Title of Composition	Composer and Author	Publisher

CBS v. ASCAP

CX 2, Exhibit No. 9

"Articles of Association of the American Society of Composers, Authors and Publishers", dated 1/70.

E 69

ARTICLES OF ASSOCIATION

of the

AMERICAN SOCIETY

of

COMPOSERS, AUTHORS

and

PUBLISHERS

January, 1970

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ARTICLES OF ASSOCIATION.

ARTICLE I.

OBJECTS.

SECTION 1. We constitute ourselves a voluntary association under the name of "American Society of Composers, Authors and Publishers," for the following purposes, to-wit:

(a) To protect composers, authors and publishers of musical works against piracies of any kind;

(b) To promote reforms in the law respecting literary property;

(c) To procure uniformity and certainty in the law respecting literary property in all countries;

(d) To facilitate the administration of the copyright laws for the protection of composers, authors and publishers of musical works;

(e) To abolish abuses and unfair practices and methods in connection with the reproduction of musical works;

(f) To promote and foster by all lawful means the interest of composers, authors and publishers of musical works;

(g) To grant licenses and collect royalties for the public representation of the works of its members by instrumentalists, singers, mechanical instruments, radio broadcasting stations, or any kind of combination of singers, instrumentalists and mechanical instruments, and to allot and distribute such royalties;

(h) To adjust and arbitrate differences and controversies between its members and between its members and others, and to represent its members in controversies, actions and proceedings, involving the right of public performance of any work of any member, or the question of authorship in any work of any member;

(i) To promote friendly intercourse and united action among composers, authors, publishers and producers of musical works;

(j) To acquire, own and sell real and personal property, and to accumulate and maintain a reserve fund to be used in carrying out any of the objects of the Society;

(k) To enter into agreements with other similar associations in foreign countries, providing for the reciprocal protection of the rights of the members of each Society;

(l) To do any and all other acts or things which may be found necessary or convenient in carrying out any of the objects of the Society or in protecting or furthering its interests or the interests of its members.

SECTION 2. The principal office of the Society is to be located in the City of New York.

ARTICLE II.

DURATION.

The duration of the Society shall be ninety-nine years.

ARTICLE III.

MEMBERSHIP.

SECTION 1. The membership of this Society shall be divided into three classes, as follows:

A. PARTICIPATING CLASS.

The following shall be eligible to be elected to membership in this class:

(i) *Music Publishers*

Any person, partnership, firm or corporation actively engaged in the music publishing business who assumes the financial risk involved in the normal publication of musical works and/or whose compositions are regularly performed by the Society's licensees.

(ii) *Composers and Authors*

Any composer or author of musical works who regularly practices the profession of writing music or the text or lyrics of musical works, and who shall have had not less than one work of his composition or writing regularly published.

(iii) *Successors of Deceased Composers and Authors*

Any person who has acquired, by will or under any law, the right, title and interest of a deceased composer or author in any musical works, including the right of public performance thereof.

Members of this group shall not have voting power or be eligible to office, except as provided in Article XX, Section 2.

B. Non-Participating Class.

The following shall be eligible to be elected to membership in this class:

(i) *Music Publishers*

Any person, firm, partnership or corporation actively engaged in the music publishing business whose musical publications have been used or distributed on a commercial scale for at least one year, and who assumes the financial risk involved in the normal publication of musical works but who is not found to be eligible for membership in the participating class.

(ii) *Composers and Authors*

Any composer or author of a copyrighted musical composition who shall have had at least one work of his composition or writing regularly published but is not found to be eligible to membership in the participating class.

Members in both subdivisions (i) and (ii) of the Non-Participating Class shall not be entitled to hold office or share in any of the rights, benefits, privileges, royalties or emoluments of the participating class, except as provided in Section 12 of this Article III.

C. Associate Membership.

Any composer or author of a copyrighted musical composition who is not found to be eligible to membership in the participating class may be elected as an associate member. Associate members shall not pay any dues and shall not be entitled to hold office or share in any of the rights, benefits, privileges, royalties or emoluments of the participating class.

D. Honorary Membership.

Any person, firm or corporation which has rendered to the art or industry of music, or to this Society, a notable or conspicuous service, may be eligible to membership in this class and elected thereto by unanimous vote of the Board of Directors. All nominations in respect to this class of membership shall, however, be tabled at the meeting first presented, and may not be acted upon until or after the next succeeding meeting.

Members in this class shall not be entitled to vote, hold office or share in any of the rights, benefits, privileges, royalties or emoluments of the participating classes.

DUES.

SECTION 2. The annual dues, payable on the first day of January in each year, shall be as follows:

Participating Music Publishers	$50.00
Participating Composers and Authors	10.00
Successors to Deceased Composers and Authors	10.00
Non-participating Music Publishers	$25.00
Non-participating Composers and Authors	5.00

Upon election to any of the above classes the member shall pay the pro-rata of annual dues for his class to the first day of the following January, and thereafter at the annual rate for his class.

Honorary	None

Unless otherwise directed by the Board of Directors, all sums received in payment of dues shall be for the use and benefit of the Relief Fund of the Society.

Upon the default in excess of ninety days in payment of any dues, after notice thereof to the member, the Board of Directors may suspend or expel the delinquent member.

The Board of Directors may waive the dues of writer-members in the Armed Forces of the United States.

APPLICATION FOR MEMBERSHIP.

SECTION 3. Application shall be made in writing upon a printed blank form prepared by the Committee on Membership. Every application shall be signed by an individual applicant in person, by a firm, through a co-partner, by an association or corporation through a duly authorized officer. The application shall be submitted to the Membership Committee and shall be accompanied by proof of eligibility to membership.

INTENT OF APPLICATION.

SECTION 4. The signing and presentation of such an application to the Membership Committee shall be deemed and construed to be an agreement on the part of the applicant to fulfill, duly perform, and abide by the Articles of Association, and all requirements herein contained; and to conform to, duly perform and abide by, all by-laws, rules, regulations or resolutions, whether expressed in the Articles of Association or otherwise, which may be in force at the time of such application or may thereafter from time to time be adopted, and to all amendments of and additions to the Articles of Association, by-laws, rules or regulations which after the time of such application may from time to time be adopted.

ELECTION TO MEMBERSHIP.

SECTION 5. A majority vote of all members of the Board of Directors shall be necessary to elect an applicant to membership.

OBLIGATION OF APPLICANT.

SECTION 6. Each member shall, upon election to membership, execute an assignment in such form as the Board of Directors shall approve, vesting in the Society the right to license, upon a non-exclusive basis, the non-dramatic public performance of the member's works for the period of any then existing agreement between the Society and members of the same class.

Such assignment shall not limit, restrict or interfere with the right of any member to issue to a user* non-exclusive licenses for rights of public performance nor shall the assignment required of members in the non-participating classes extend for a period of more than one year at any given time.

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* "User" means any person, firm or corporation who or which (1) owns or operates an establishment or enterprise where copyrighted musical compositions are performed publicly for profit, or (2) is otherwise directly engaged in giving public performance of copyrighted musical compositions for profit, or (3) is entitled to obtain a license from the Society under the provisions of Section V of the Amended Final Judgment entered in the United States District Court for the Southern District of New York on March 14, 1950.

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Upon the expiration of such agreement or any renewal thereof, each member shall execute a new assignment in such form and for such period as the Board of Directors shall then approve generally for the members of the Society vesting in the Society the right to license the non-dramatic public performance of the member's works. The Board of Directors shall have the right to call upon the members to execute and deliver to the Society such new assignment at any time within eighteen months prior to the expiration of the then current assignment. Any member who fails or refuses to execute and deliver such an assignment within sixty days after the mailing or delivery to the member of such form of assignment, shall automatically cease to be a member of the Society upon the expiration of the period of the then current assignment, and thereupon shall lose and cease to have any and all interest, right or claim in, to or under the Society, the property thereof and the dues and assessments paid thereto, in the same manner and to the same full extent as provided in Article XX, Section 1 hereof. The Board of Directors, however, shall have the right, at its option, to extend the time period within which members generally shall execute and deliver such assignment. Such termination of membership shall not relieve any member from his obligations to the Society up to the date of such termination.

Members' List of Works.

Section 7. The applicant on being elected to membership shall, upon request, state upon a regular printed form furnished by the Secretary, a brief title, description and the date of copyright, of each work published or written by him. Each member shall upon the publication of any work of which he is the author, composer or publisher, furnish to the Secretary, a brief title, description and the date of copyright thereof.

Membership Roll.

Section 8. It shall be the duty of the Membership Committee to prepare and keep a membership roll or list of members of the Society.

FALSE REPRESENTATION BY MEMBER.

SECTION 9. Whenever it shall appear to a majority of the Membership Committee that a misstatement upon a material point has been made to it by a member, upon his application either for membership or reinstatement, it shall report the case to the Board of Directors, who by a two-thirds vote of all the members of the Board may expel the member after a trial as in these Articles provided.

FAILURE OF MEMBER TO QUALIFY.

SECTION 10. If within thirty days after the election to membership, the member shall have failed to execute and deliver to the Society the assignment provided for by Section 6 preceding, and to comply with all other rules, regulations and requirements of the Society, the membership shall be discontinued.

VOTING.

SECTION 11. Each publisher member, if a co-partnership, firm, association or corporation shall file with the Secretary of the Society, from time to time, the name of a person who shall be deemed to be its representative in the Society for all purposes, and wherever in these Articles of Association there shall be reference to publisher members relating to election as directors, holding other office or serving in any other capacities, the same shall have reference to such representatives. If a co-partnership or firm, such representative shall be a member thereof and if an association or corporation, such representative shall be an officer thereof. No such co-partnership, firm, association or corporation shall have more than one representative at any one time. Such designation may be revoked at any time by notice in writing given to the Society provided that a new representative shall be named, subject to the restrictions above contained.

In the event that a writer member is a partner in any co-partnership or firm, or a member of any association, or the owner of stock in any corporation which is a publisher member of the Society (other than a publisher member which publishes only the works of such writer), such writer and the publisher member's representative shall not be eligible to serve on the Board of Directors simultaneously.

LIMITED PARTICIPATION OF NON-PARTICIPATING MEMBERS.

SECTION 12. If the musical compositions of a non-participating member are performed by licensees of the Society, as shown in the survey of performances made by or for the Society, such member shall be entitled to receive his proportionate share of the distributions of royalties to members to the extent that such distributions are made solely on the basis of current performances of the compositions of members.

TERMINATION OF NON-PARTICIPATING MEMBERSHIP.

SECTION 13. At yearly intervals after election of a non-participating member the Board of Directors may, by two-thirds vote of those present, determine whether the membership in this class shall be transferred to the appropriate participating class. No such membership shall be discontinued except upon a showing that the member's compositions during no one of the preceding five years have been sufficiently performed by licensees of the Society to result in a distribution to the member in an amount at least equal to his current annual dues, and except after due notice to the member and an opportunity afforded him to submit in writing to the Board of Directors reasons why his membership should not be discontinued.

Upon the transfer of a non-participating member to one of the participating classes, and before the transfer shall be deemed effective, the member shall execute and deliver to the Society an assignment in the form required of participating members under Section 6 of this Article III.

WITHDRAWAL FROM MEMBERSHIP.

SECTION 14. Any member may withdraw from membership in the Society at the end of any fiscal year upon (1) giving three months' advance written notice to the Society, and (2) agreeing that his resignation shall be subject to any rights or obligations existing between the Society and its licensees under then existing licenses. Subject to the above, such withdrawal shall terminate all existing assignments and the member's relationship with the Society, except that a withdrawing member whose works continue to be licensed by ASCAP by reason of the continued membership of a co-writer, writer or publisher of any such works, may elect to continue receiving distribution for such works on the same basis and with the same

elections as a member would have, so long as the resigning member does not license the works to any other performing rights licensing organization for performance in the United States. The Society may require a written acknowledgment from such resigning member that the works have not been so licensed. In any event, a resigning member shall receive distribution from the Society on the basis of performances made under licenses in effect at the time of the member's resignation. Anything to the contrary notwithstanding, the Society may, at its option, deny resigning members the right to receive payment on any basis other than a current performance basis, provided that such option must be exercised as to all resigning members alike.

ARTICLE IV.

MANAGEMENT.

BOARD OF DIRECTORS.

ELECTIONS.

SECTION 1. The government of the Society shall be vested in and its affairs shall be managed by a Board of twenty-four Directors, twelve of whom shall be writer members (that is to say, composers and authors) and twelve of whom shall be publisher members.

At all times three of such writer members shall be standard writer members, and at all times three of such publisher members shall be standard publishers. The Board of Directors shall, as far as practicable, give representation to writer members and publisher members with different participations in the Society's revenue distributions.

Commencing with the election in the year 1951 which shall be held not later than April first of that year, the entire Board of Directors shall be elected for a two-year period in the manner hereinafter in this article provided.

There shall not be eligible for election to the Board of Directors as a publisher member thereof, more than one representative from any group of affiliated publisher members. By the expression "affiliated" is meant a group of two or more publishing businesses controlled through stock ownership by any one of such group or all of which are either directly or indirectly controlled by any other person, co-partnership, firm, association or corporation.

Nine members (of whom at least three shall be writers, and three

publishers) shall be necessary to constitute a quorum, and the affirmative vote of two-thirds of such quorum shall be required and shall be sufficient to adopt or pass any motion or resolution authorizing or directing any act or thing within the power of the Board. Any number less than a quorum may meet and adjourn from time to time until a quorum be present.

The Board may determine the rules of its procedure and make any and all regulations necessary for the carrying on of the business of the Board of Directors and the officers, agents, and servants of the Society.

Any former President of the American Society of Composers, Authors and Publishers shall be an ex-officio member of the Board of Directors, without the right to vote.

MEETING OF BOARD.

SECTION 2. The Board shall meet at least once in each month and shall hold a meeting in each year promptly after the General Annual Meeting in March for the purpose of electing officers. Notices of regular or special meetings of the Board of Directors shall be given by mail by the Secretary to each director at his last known post office address at least two days previous to the time fixed for the meeting. Special meetings of the Board of Directors may be called by the President or Secretary, and shall be called by either of them on written request of any seven directors.

REPORT OF BOARD AT MEETINGS.

SECTION 3. The Board of Directors shall keep a record of its proceedings which shall be submitted at the Annual Meeting of the Society, and shall report at such meeting, or at any special meeting of the Society, any business which in its judgment requires the action of the Society.

MANNER OF ELECTION OF DIRECTORS.

SECTION 4. Members of the Board of Directors shall be elected in the following manner commencing with the year 1961, and in each alternate year thereafter:

(a) A Publishers Nominating Committee shall be appointed by the Board of Directors at its meeting next (but not less than thirty days) preceding the date upon which the Annual General Meeting is to be held in such year. No member of the Board shall

be eligible to serve upon such committee. All members of the Board shall have the right to vote for members of such nominating committee which nominating committee must consist of three publishers (one of whom shall be a standard publisher).

(b) A Writers Nominating Committee shall be appointed by the Board of Directors at its meeting next (but not less than thirty days) preceding the date upon which the Annual General Meeting is to be held in such year. No member of the Board shall be eligible to serve upon such committee. All members of the Board shall have the right to vote for members of such nominating committee which nominating committee must consist of six writers (one of whom shall be a standard writer) selected one each from six groups as follows: all the writer members of the Society shall be classified into six groups based upon their respective participation in the Society's domestic royalties (excluding all sums received as prize awards) during the previous calendar year, to wit: the maximum amount of such royalties received by any writer member shall be the base and such amount shall be divided by six.

(c) Each member of each committee on nominations shall have one vote. Each committee on nominations shall elect its own chairman. In case of a tie in voting for Chairman, the Board of Directors shall designate such Chairman. Any vacancy in either such committee shall be filled by appointment of another member from the same class and subdivision, if any, chosen by the Board of Directors.

(d) Each committee on nominations shall promptly select and nominate from the general membership one candidate for each publisher director and two candidates for each writer director to be elected in the general election. It shall secure the consent of such candidates to stand for the office and shall also automatically regard each incumbent director as a candidate for reelection unless by him otherwise instructed in writing. If any publisher member incumbent shall fail to stand for re-election then two candidates instead of one shall be nominated for his office.

In any election for the Board of Directors the nominees for Directors shall include, in addition to those nominees chosen by the Nominating Committees, any person eligible to be a Director who is designated by a petition subscribed to by 25 or more of

the members of the Society entitled to elect such Director. Any such petition designating a candidate must be submitted to the Society in writing at least 10 days prior to the selection and nomination of candidates by the Nominating Committees.

(e) The members of the Publishers Nominating Committee and the members of the Writers Nominating Committee shall jointly constitute the Committee on Elections. This Committee subject to the regulations contained in this Section 4, shall have charge of the conduct and procedure of the election of directors and shall hold office only until it shall have certified to the Board of Directors the result of the particular election of which it had supervision. Each member of such committee shall have one vote. Such committee shall elect its own Chairman.

(f) The Committee on Elections shall prepare a ballot in such form as shall be approved by the Board of Directors, showing in respect of each vacancy the class or division of membership from which the nominee must be chosen, the names of the present incumbent if a candidate, together with a statement on the ballot that incumbent's name is placed thereon by mandate of the Articles of Association; the ballot for publisher nominees shall also designate one additional candidate and that for writer nominees two additional candidates; both forms of ballot shall contain a suitable blank space wherein any member may write in the name of any member of the specified class or division for whom he votes instead of or in preference to the regular nominees.

Ballots shall be consecutively numbered, and shall provide a space for signature of the voting member. One ballot, and one only, shall be made available for the use of each active member in good standing except that lost, misplaced, mutilated or destroyed ballots may be replaced in the sole discretion of the Committee on Elections.

One ballot shall be mailed to each such member, at his last address as disclosed by the records of the Society, not less than twenty days before the date of the General Annual Meeting. Each such ballot shall be accompanied by a postage-prepaid envelope addressed to the Committee on Elections in care of the Society.

Each qualified member may cast his vote by mail, or personal delivery to the Committee. All votes must be thus cast and received not later than midnight five days before the date set for

the General Annual Meeting. Votes received thereafter shall not be counted.

The Committee shall appoint its choice of tellers, exclusive of members of the Board of Directors or any candidate, and shall make all rules for totaling, tabulating and counting the votes cast. It shall be privileged to call upon the management and staff of the Society for any required assistance.

The candidate receiving the highest number of votes cast shall be deemed elected. In case of a tie between the two highest, the candidate who has been longest a member of the Society shall be declared elected.

The Committee after canvassing the vote, shall by written certificate presented to the President not later than the opening of the General Annual Meeting, certify the names of the winning candidates together with a statement showing the number of votes cast for each candidate.

All ballots, tally sheets and other memoranda, incident to the tabulation of the votes shall be retained for three months, and be available for examination by any Committee of not less than five members in good standing.

(g) Publisher members only shall be entitled to vote for Directors from this class and writer members only for Directors from this class. All writer members, whether author or composer, shall be qualified to vote for writer Directors.

(h) Voting rights of all members within their respective classes in Elections of Directors, shall be determined upon the following basis, subject to the limitation that no member shall have more than 100 votes:

Composer–Author Members

Each composer or author member who has received any performance credits in the latest available preceding fiscal survey year shall have one vote, plus (i) one vote for each 1,000 credits up to 20,000 credits, plus (ii) one vote for each 2,000 credits from 20,001 to 26,000 credits, plus (iii) one vote for each 3,000 credits from 26,001 to 35,000 credits, plus (iv) one vote for each 4,000 credits from 35,001 to 51,000 credits, plus (v) one vote for each

5,000 credits from 51,001 to 101,000, plus (vi) one vote for each 6,000 credits in excess of 101,000 credits.

Publisher Members

Each publisher member who has received any performance credits in the latest available preceding fiscal survey year shall have one vote, plus (i) one vote for each 4,000 credits up to 100,000 credits, plus (ii) one vote for each 8,000 credits from 100,001 credits to 140,000 credits, plus (iii) one vote for each 12,000 credits from 140,001 to 200,000 credits, plus (iv) one vote for each 16,000 credits from 200,001 to 408,000, plus (v) one vote for each 20,000 credits in excess of 408,000 credits.

The above formulae shall be kept current in the following manner. The number of writer and publisher performance credits respectively yielded by the Society's survey ended September 30, 1958 shall be calculated. This number shall be divided into the number of writer and publisher performance credits respectively yielded by the survey in the latest available fiscal survey year preceding the election in question. The resulting figures, rounded to the nearest tenth, for the writer members and publisher members respectively, shall be used as multipliers on each of the numbers above which is underlined.

If at any time more than 40.8% of the total publisher votes would be represented by the ten publisher members and "groups of affiliated publisher members" (as that term is used in Article IV, Section 1 hereof) having the highest number of publisher votes, the weighting of votes as set forth in the above formula for publisher members shall be changed to bring the percentage of votes of such publishers down to 40.8%. This shall be accomplished by proportionately diminishing the votes otherwise allocable to such publishers by the amounts necessary to effect such result. Anything to the contrary notwithstanding, a publisher member which is not subject to such diminution of its votes shall not be allocated more votes than any publisher member which is subject to such diminution.

A member who received no performance credits in the latest available fiscal survey year shall not be entitled to vote in an Election for Directors.

(i) Notwithstanding the provisions contained in subsection (f) of this Section 4, any group of writer members entitled to cast one-twelfth of the votes of all writer members, or any group of publisher members entitled to cast one-twelfth of the votes of all publisher members, may elect any eligible person a Director by signing a petition and presenting such petition to the Society at least 90 days before the date of any scheduled election for Directors. In such event, the number of Directors to be elected in the general election shall be reduced by the number of Directors so elected by petition and all members signing such petition shall not be entitled to vote in the general election or to sign more than one petition in advance of any general election.

ARTICLE V.

Powers of the Board of Directors. Management.

Section 1. The Board of Directors shall have charge of and supervision over the general management of the business of the Society, and in addition to the powers by these Articles expressly conferred upon it, may exercise all such powers and do all such acts and things as may be exercised or done by the Society.

Contracts.

Section 2. Without prejudice to the general powers conferred by the last preceding section and the other powers conferred by these Articles, it is hereby expressly declared that the Board of Directors shall have the following powers, that is to say:

To make contracts or authorize contracts to be made by officers of the Society or by any of the committees provided for by these Articles; to fix the rate, time and manner of payment of royalties for the performances of all works registered with the Society; to collect such royalties; to maintain all legal proceedings necessary to enforce payment of such royalties and compromise claims for damages and penalties for unlawful performances; to distribute among the members the royalties collected in the proportionate shares provided for in the scheme of allotment of royalties prescribed in these Articles; to enforce the fulfillment of all contracts, both on the part of the members of the Society and third parties, that may have been made by the Society; to authorize the prosecution and defense of any matter, action or

proceeding within the scope of the Society, or affecting its interests or involving the rights of public performance of any work of any member or the question of authorship in any work of any member.

To purchase or otherwise acquire for the Society any property, rights and privileges which the Society is authorized to acquire, at such prices and on such terms and conditions, and for such considerations, as it thinks fit.

To appoint and at its discretion remove or suspend, such assistant secretaries, assistant treasurers, managers, subordinates, assistants, clerks,. agents and servants, permanently or temporarily, as it may from time to time think fit, and to determine their duties and fix and from time to time change their salaries or emoluments, and to require security in such instances and in such amounts as it may think fit.

To confer by resolution upon any committee or officer of the Society the right to choose, remove or suspend such subordinate officers, agents or servants.

To determine who shall be authorized to sign, on the Society's behalf, receipts, endorsements, checks, releases, contracts and documents.

From time to time to provide for the management of the affairs of the Society in such manner as it thinks fit, and in particular from time to time to delegate any of the powers of the Board of Directors to any Committees, officers or agents, and to appoint any persons to be the agents of the Society, with such powers (including the power to sub-delegate) and upon such terms as may be thought fit.

To appoint and dissolve all committees; to define, alter and regulate the jurisdiction and exercise original and supervisory jurisdiction over any and all subjects and matters referred to said committees; it may direct and control their actions or proceedings at any stage thereof, and shall try all charges against members and punish such as may be found guilty.

The Board of Directors shall have the power to make such regulations and to take such action not inconsistent with the Articles of Association and the by-laws, as it may deem advisable for the protection of the property and for the general objects of the Society. It shall adopt a seal of the Society.

The Board of Directors shall have the control over and power

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of disposition of all funds belonging to the Society. It shall determine the manner and form of their investment and the depositaries of such funds.

SALARIES OF DIRECTORS.

SECTION 3. Directors as such shall not receive any salaries for their services except that the sum of $600 may be appropriated out of the treasury at each meeting of the Board of Directors for distribution as attendance fees among such directors of the 24 members of the Board as shall be present within five minutes after the meeting has been called to order.

If any member of the Board of Directors shall be absent from four consecutive regular monthly meetings of the Board of Directors, the Board shall thereupon remove such absentee director from his office as a director and from any other office held by him. The Board of Directors shall appoint a successor as provided in Article V, Section 4. Such member shall not, however, be disqualified from filling the vacancy thereby created.

VACANCY IN BOARD OF DIRECTORS.

SECTION 4. In case of the death, removal or resignation of a director or of any vacancy in the Board of Directors, such vacancy shall be filled by the election of a director belonging to the same class of directors as the member of the Board whose place is to be filled, by a two-third vote of the entire Board, the term of office of such newly elected member to terminate upon the election of his successor at the next general annual meeting held for the election of directors generally. At such meeting a director shall be elected of the same class of directors as the member of the Board whose place is to be filled, for the unexpired term, in the manner provided for the election of directors.

REMOVAL OR SUSPENSION OF DIRECTOR OR OFFICER.

SECTION 5. In case, at any regular or special meeting of the Board of Directors, two-thirds of those present shall be of the opinion that sufficient cause exists for the removal of any director or officer from such office, and that his removal is for the best interest of the Society, a special meeting of the Board of Directors shall be called, upon three days' written notice to each of the directors, specifying the charges against the director or officer

against whom such are directed; and a copy of such charges shall be served upon the director or officer so charged, at least three days before such special meeting. In case, at such special meeting, the directors shall after hearing such director or officer, determine by an affirmative vote of two-thirds of all the directors in office, that sufficient cause exists for his removal, and that his removal is for the best interest of the Society, then such person shall immediately cease to be a director or officer as the case may be, and the resulting vacancy shall be filled as provided in Section 4 next above.

The Board of Directors may suspend from office any officer or director against whom charges have been preferred.

DISQUALIFICATION OF MEMBER OF BOARD OF DIRECTORS.

SECTION 6. No member of the Board of Directors shall be disqualified from participating in any meeting, action or proceeding of any kind whatever of said Board of Directors, by reason of being or having been a member of a Standing Committee or Special Committee which has made prior inquiry, examination or investigation of the matter under consideration. Nor shall any member of any Standing or Special Committee be disqualified, by reason of such membership, from acting as a member of the Board of Directors upon any appeal from any decision of such Standing or Special Committee. But no member shall participate in the adjudication of any case in which he is personally interested.

No member of the Board of Directors shall participate in or vote on any question relating to the negotiation, execution, performance or enforcement of any license agreement with a motion picture producer where such member at the time, directly or indirectly, has any pecuniary interest in any motion picture producer, or in any subsidiary or affiliate of such producer or in any contractual relationship with any such producer.

No officer or member of the Board of Directors or any person acting on behalf of the Society shall participate in or vote on any question relating to any transaction or negotiation involving the Society and a licensee, or prospective licensee, where such officer, director or other person has any pecuniary interest in such licensee or prospective licensee, or in any subsidiary or affiliate thereof, or in any contractual relationship with any such licensee or prospective licensee.

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Examination of Member.

Section 7. The Board of Directors may, by a two-thirds vote of its members present, require that any member of the Society shall submit to the Board of Directors or any Standing or Special Committee, for examination, such portion of his books or papers as are material and relevant to any matter under investigation by said Board of Directors or by any Standing or Special Committee. Any member who shall refuse or neglect to comply with such requirements, or shall wilfully destroy any such required evidence, or who, being duly summoned, in pursuance of a two-thirds vote of the members of the Board of Directors present, shall refuse or neglect to appear before the Board of Directors or any Standing or Special Committee, as a witness, or refuse to testify before any such Committee, may be adjudged guilty of an act detrimental to the interest or welfare of the Society.

Final Decision by Trial.

Section 8. Any hearing or trial may be adjourned, from time to time, by the Board of Directors in its discretion; but no member thereof, who shall not have been present at every meeting of said Board of Directors at which evidence is taken, or at which an accused member, or a member whose conduct is involved in the hearing or trial, is heard, shall participate in the final decision.

ARTICLE VI.

Officers.

Section 1. Shall consist of a President, two Vice-Presidents, a Secretary, Assistant Secretary, a Treasurer and an Assistant Treasurer who shall be Directors of the Society, and a Counsel who need not be a member of the Society.

Election of Officers.

Section 2. The President, the Vice-Presidents, the Secretary, Assistant Secretary, the Treasurer, and Assistant Treasurer, shall be elected annually by the Board of Directors by two-thirds vote of the entire Board, and such officers shall hold the same offices in the Board of Directors. Each officer, excepting the Counsel, shall serve for the term of one year and until the election and qualification of his successor. In the event of a failure to elect a President at the end of any such year, the office of President shall be

declared vacant until the next President shall be elected. Pending such election, the first Vice-President shall discharge the duties of the President. The office of President shall carry with it such salary as the Board of Directors may fix from time to time.

APPOINTMENT OF COUNSEL.

SECTION 3. The Counsel shall be appointed by the Board of Directors for such term as may be decided by the Board.

VACANCY OF OFFICE.

SECTION 4. In case a vacancy shall occur in the office either of the President, Vice-Presidents, Secretary, Assistant Secretary, Treasurer or Assistant Treasurer, an election shall be held forthwith to fill the vacancy for the unexpired term.

EXPULSION OR SUSPENSION OF OFFICER.

SECTION 5. The expulsion or suspension of a member holding any office or position, to which he has been either elected or appointed, shall create a vacancy therein which shall be filled as provided in these Articles.

ARTICLE VII.

THE PRESIDENT.

The President shall be the chief executive officer of the Society. He shall preside at all meetings of the Board of Directors. He shall have general supervision over the business affairs and property of the Society and over its several officers.

He shall see that all orders and resolutions of the Board of Directors and of the Society are carried into effect and he shall sign all contracts and agreements authorized by the Board of Directors, unless the Board shall otherwise direct. The President shall submit to the Board of Directors, as soon as may be after the close of each fiscal year, and to the members at each annual meeting a complete report of the operations of the Society for the preceding year, and of the state of its affairs, making such recommendations as he thinks proper, and he shall from time to time report to the Board of Directors all matters within his knowledge which the interests of the members may require to be brought to its notice. The President shall be ex-officio a member of all standing committees.

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ARTICLE VIII.

The Vice-Presidents.

The Vice-Presidents shall have such powers and perform such duties as the Board of Directors may from time to time prescribe, and perform such other duties as may be prescribed in these by-laws. In case of the absence of the President or his inability to act, the Vice-President shall discharge the duties of the President.

ARTICLE IX.

The Treasurer.

The Treasurer shall have charge of the funds, securities, receipts and disbursements of the Society. He shall deposit all moneys and other valuable effects in the name and to the credit of the Society in such depositaries as the Board of Directors may from time to time designate. He shall disburse the funds of the Society as may be ordered by the Board, by checks or drafts upon the authorized depositaries of the Society, signed by the President or Vice-President and countersigned by himself or an Assistant Treasurer. He shall take and preserve proper vouchers for all moneys disbursed. He shall render to the President or to the directors, at the regular meetings of the Board, whenever the President or said Board shall require him to do so, and at every annual meeting of the Society an account of the financial conditions of the Society and of all of his transactions as Treasurer; and as soon as may be after the close of each fiscal year he shall make and submit to the Board of Directors a like report for each fiscal year. He shall keep at the principal office of the Society full and correct books of account of all its business and transactions. He shall give to the Society a bond in such sum as the Board of Directors may from time to time designate conditioned for the faithful performance of the duties of his office and the restoration to the Society at the expiration of the term of his office or in case of his death, resignation or removal from office, of all books, papers, vouchers, money or other property of whatever kind in his possession belonging to the Society. In the absence of the Treasurer or his inability to act, the Assistant Treasurer shall perform all the duties of the Treasurer. The Treasurer shall pay no bills unless they are properly certified by the officer or com-

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mittee authorized by the Board of Directors to make the expenditures. The books and accounts of the Society shall be audited monthly in such manner as the Board of Directors may order.

ARTICLE X.

The Secretary.

The Secretary shall be ex-officio Secretary of the Board of Directors. He shall record all the votes and proceedings of the meetings of the Society, and of the Board of Directors in a book or books. He shall record all the votes and proceedings of the meeting of the Society, and when authorized by the Board of Directors he shall affix such seal to any instrument requiring the same. He shall countersign all contracts and agreements signed by the President. The seal of the Society, so affixed, shall always be attested by the signature of the Secretary, or an Assistant Secretary. He shall give notice of all meetings of the Society, and of the Directors, and of all calls for assessments to be paid by the members. The Secretary shall also have such other powers and perform such other duties as pertain to his office, or as the Board of Directors may from time to time prescribe. In the absence of the Secretary or his inability to act, the Assistant Secretary shall have all the foregoing duties.

ARTICLE XI.

The Counsel.

The Counsel shall be the legal adviser of the Society, the Board and the various committees. He shall have supervision of all matters involving legal questions, and shall appear for the Society in all actions or proceedings.

ARTICLE XII.

Absence or Suspension of Officer.

In case of the absence of the President, a Vice-President, the Secretary, Assistant Secretary, the Treasurer or Assistant Treasurer, or in case of the suspension of any such officer pending his trial on charges, the Board may delegate his powers and duties to any other officer, or to any Director for the time being.

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ARTICLE XIII.

Order of Business, Directors' Meetings.

The order of business at the meetings of the Board shall be as follows:

1. A quorum of thirteen members being present, the President shall call the Board to order.

2. The minutes of the last meeting shall be read and considered as approved, if there be no amendments.

3. Reports of officers of the Society.

4. Reports of Committees.

5. Unfinished business.

6. Miscellaneous business.

7. New business.

ARTICLE XIV.

Standing Committees.

Section 1. Finance Committee. There shall be a Finance Committee which shall attend to and supervise all the fiscal operations of the Society to the extent and in the manner directed by the Board, and this or such other committee as may be appointed, shall examine all accounts of the Society at the close of each fiscal year and at such other times as may be deemed necessary, and report thereon.

Section 2. Executive Committee. The Board of Directors shall appoint an Executive Committee from among the members of the Board, who shall advise with and aid the officers of the Society in all matters concerning its interest and the management of its business and clothed with such powers as may be prescribed or delegated by the Board of Directors, from time to time, included among which shall be that of supervising the activities of the Society during the intervals between meetings of the Board of Directors.

Section 3. Membership Committee. There shall be a Membership Committee which shall pass upon the applications filed with the Committee and shall verify the statements therein contained, and may require of each applicant additional proof of

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eligibility to membership. This committee shall consist of members of the Board of Directors.

SECTION 4. COMPLAINT COMMITTEE. Any member against whom a complaint is made before this Committee of violation or as to whom the Committee may at any time initiate an inquiry into any alleged violation of the Articles of Association, the by-laws or any resolution of the Society, or of the Board of Directors, regulating the conduct of the members, or of any conduct or proceeding inconsistent with the Articles of Association, or of misconduct, fraud, fraudulent acts or acts derogatory to the welfare of or prejudicial to the Society, shall be notified thereof, and if he desires he shall be heard in his defense, and shall be afforded an opportunity to examine all charges, papers and evidence submitted to the Committee and to make answer thereto. The Committee shall have the power to make rules respecting hearings upon such complaints, and, upon notification, to require any member to appear before the Committee and answer all pertinent questions asked of him and furnish any and all relevant information sought by the Committee in connection with any complaint or inquiry. A member who fails or refuses so to appear before the Committee or to furnish such relevant information shall be deemed to have acted in a manner derogatory to the welfare of and prejudicial to the Society, and shall be subject to disciplinary proceedings therefor in the manner herein provided. Proceedings before the Committee shall be confidential, and shall be disclosed only as the Directors order, after the proceedings have been reported to them.

Unless the Committee finds there are no grounds for further proceedings, it shall refer the matter to an impartial Panel for hearing. For such purposes, the impartial Panel shall be selected as follows: The accused member shall, within twenty days after notice, select two members of the Society, and the Complaint Committee shall also select two members of the Society (who may or may not be members of the Committee). In the event of the accused member failing to select two members within the prescribed time, the Board of Directors shall select the two members for him. The four members so selected shall agree upon three persons who may, but need not, be members of the Society, and who shall constitute the impartial Panel. In the event the four designated members fail to agree on three members of the Panel,

the American Arbitration Association shall designate the person or persons needed to complete the Panel.

The compensation of the Panel members shall be determined from time to time by the Board of Directors. In the hearing, which shall be relatively informal, before the impartial Panel so selected, the Complaint Committee must establish the offense charged and the accused member shall be entitled to a full and fair hearing, and both the accused member and the Complaint Committee shall be entitled to have counsel. If the impartial Panel, by majority vote, shall find a member guilty of the charge, the Panel may, in its discretion, censure, fine, suspend or expel such member, and the decision of the Panel shall be conclusive and final, and the Board of Directors shall take measures to carry out such decision.

SECTION 5. APPOINTMENT AND TERM OF STANDING COMMITTEES. All standing committees shall be appointed to hold office for not more than one year or until their successors are appointed. The members of the Finance Committee, Membership Committee, Complaint Committee and the two Relief Committees shall be appointed by the President with the approval of the Board of Directors and the President shall submit the names of the members of such respective committees within thirty days after he shall have assumed office.

Unless in these Articles of Association specifically otherwise provided, membership of committees shall consist exclusively of members or officers or employees of the Society, as the Board in its sole judgment may deem desirable or advisable, and of such number as the Board of Directors shall fix from time to time.

SECTION 6A. CLASSIFICATION COMMITTEES. There shall be two Classification Committees for the allotment of royalties – one for the classification of publisher members and one for the classification of composer and author members. The Classification Committee for the publisher members shall consist of the publisher members of the Board of Directors, and the Classification Committee for the composer and author members shall consist of the composer and author members of the Board of Directors.

Each such Committee shall meet not less than once in each year for the purpose of classifying the members over which it shall have jurisdiction and to review and revise the classification of the respective members to the end that the allotment and ap-

portionment of the royalties among the respective members shall be determined in a fair and non-discriminatory manner as hereinafter provided.

It shall be the duty of the Classification Committees to determine the status of each member of the Society with respect to the share of the royalties to which he is entitled and the distribution of royalties directed to be made by the Board of Directors. Such Committees in fixing the status of a member shall take into consideration the number, nature, character and prestige of works composed, written or published by such member, the length of time in which the works of the member have been a part of the catalogue of the Society, and popularity and vogue of such works, all to be determined in a fair and non-discriminatory manner.

Primary consideration shall be given to the performance of the compositions of members as indicated by objective surveys of performances (excluding those licensed by the member directly) periodically made by or for the Society.

Each such Committee shall set forth in writing the general basis of member classification, which shall be mailed to every member in the class thereby affected.

SECTION 6B. PROTESTS. Any member, aggrieved by the distribution of the Society's revenues to such member, or by any rule or regulation of the Society directly affecting the distribution of the Society's revenues to such member, may give notice to that effect in writing to the Secretary of the Society, stating that he proposes to protest to the Board of Review and setting forth the grounds for his complaint. The Board of Review shall entertain his complaint and give him an opportunity to appear in person, or by any other person of his own selection, including a member of the Society, if he so desires, or to present his complaint in writing or both; any one or more members of the applicable Classification Committee may likewise appear in person on such complaint.

The Board of Review shall set forth in detail its findings of fact and the grounds of its decision. Stenographic transcripts of each proceeding before the Board of Review shall, at the request of any member, be supplied by the Society to such member at cost. If the Society itself requires or makes use of the transcript, the member shall pay only the cost of making a second copy.

The decision of the Board of Review shall be deemed final unless either the member or the Classification Committee files a notice of appeal in writing with the Secretary of the Society within thirty days after receiving written notice of such decision; in such case all evidence taken before the Board of Review shall be referred to the Panel provided for in Section 6D of this Article XIV.

The Panel, after considering any such appeal, may reverse or modify the decision of the Board of Review by a vote of not less than two-thirds of the Panel and in its discretion may impose costs. If less than two-thirds of the Panel vote for reversal or modification, the decision of the Board of Review shall be affirmed. The decision of the Panel shall be conclusive and final.

On appeal to the Panel from an adverse decision of the Board of Review, the appellant may seek to have the order, rule or regulation involved properly interpreted or applied, to have errors rectified, or to void such rule or regulation on grounds of its discriminatory or arbitrary character. Any additional amounts finally determined by the Board of Review (or, in case of appeal, by the Panel) to be due a member with respect to the distribution complained of by such member and all subsequent distributions to the date of the decision shall be paid to the member promptly after the rendering of such decision.

Any complaint by a member pursuant to this Section 6B must be filed by the aggrieved member within nine months of the receipt by him of his annual statement or of the rule or regulation on which such complaint is founded and the relief which the Board may grant in terms of monetary payment shall not extend back beyond the period of time covered by such annual statement, provided, however, that if the alleged injustice is such that the aggrieved party would not reasonably be put on notice of it by his annual statement, the relief given may reach back as far as, in the opinion of the Board of Review, is required to do justice to all parties.

If any member of the Board of Review wishes to assert a grievance of the class described in this Section 6B, he shall have the right to protest to the Board of Directors which for the purposes of such protest shall act as the Board of Review.

In the event that the Board of Review or the Board of

Directors, as the case may be, shall not reach a decision at the meeting at which any complaint shall be presented, a decision may be made at any subsequent meeting of such Board. All members of such Board present at the meeting at which the complaint is voted on shall be entitled to participate in the consideration and decision of such complaint.

SECTION 6c. BOARD OF REVIEW. (1) Commencing with the election in the year 1964, and in each alternate year thereafter, there shall be elected for a two-year period from the general membership a Board of Review consisting of four writer members (two authors and two composers, one of whom shall be a standard writer) and four publisher members (one of whom shall be a standard publisher). In addition, there shall be elected one alternate in each class and division (i.e., popular-production writer; standard writer; popular-production publisher; and standard publisher). Each alternate shall be given notice of all meetings of the Board of Review and shall attend such meetings in the absence of a member in the class and division to which he shall be elected as such alternate. No member of the Board of Directors nor any representative of a publisher member affiliated with any publisher member (as defined in Article IV, Section 1) having a representative on the Board of Directors, shall be eligible to serve on the Board of Review. The four writer members shall be elected by all the writers and the four publisher members shall be elected by all the publishers.

(2) Commencing with the election in the year 1964, members of the Board of Review shall be elected in the following manner:

(a) The Publishers Nominating Committee and the Writers Nominating Committee, specified in Article IV, Section 4, subdivisions (a) and (b) of these Articles, shall each not less than thirty days preceding the date upon which the Annual General Meeting is to be held in such year, select and nominate from the general membership such number of publisher- and writer-members respectively as each such Committee may in its discretion select (but in no event less than eight publisher members and eight writer members—half of whom shall be composers, and the other half authors—respectively) not less than two publishers and two writers being standard publishers and standard writers. The nominee in each class and division, who fails of election but who receives the highest number of votes of the nominees who fail

of election in that class and division, shall serve as an alternate in his respective class and division.

(b) The Committee on Elections, specified in Article IV, Section 4, subdivision (e) of these Articles, shall prepare a ballot in such form as shall be approved by the Board of Directors showing the class or division of membership from which the nominee must be chosen; such ballot shall contain a suitable blank space wherein any member may write in the name of any member of the specified class or division for whom he votes instead of or in preference to the regular nominees.

(c) Ballots shall be numbered, distributed and returned in the manner prescribed in said Article IV, Section 4, subdivision (f).

(d) All votes must be cast and received not later than twenty days after the Ballot shall have been mailed by the Committee on Elections. Votes received thereafter shall not be counted.

(e) The Committee shall conduct the election, tabulate votes and determine the person elected and retain tally sheets and other data as provided in such subdivision (f) in Article IV, Section 4.

(f) The Committee, after canvassing the vote, shall by written certificate presented to the President not later than thirty days after such Ballots shall be mailed by it, certify the names of the winning candidates together with a statement showing the number of votes cast for each candidate.

(g) Publisher members only shall be entitled to vote for members of the Board of Review from this class and writer members only for members of the Board of Review from this class. All writer members, whether author or composer, shall be qualified to vote for writer members of the Board of Review.

(h) Voting rights of all members within their respective classes in elections of members of the Board of Review shall be upon the basis specified in subdivision (h) of Article IV, Section 4.

(3) Commencing with the election in the year 1963, six members

of the Board of Review shall constitute a quorum and the affirmative vote of a majority of those present shall be required for a decision pursuant to Section 6B of this Article XIV. In the event of an equally divided vote, the Board of Review shall certify the complaint to the Panel and its decision shall be binding, final and conclusive.

(4) The Chairman of the Board of Review (or in the case of a tie vote a member of the Board of Review representing each of the views of that body) may appear before the Panel upon any appeal from a decision of the Board of Review to the Panel.

(5) Commencing with the election in the year 1964, in case of the death, removal or resignation of a member of the Board of Review, such vacancy shall be filled by the duly elected alternate in his class and division, or in the event of failure or refusal of such alternate to serve, then by the election of a member belonging to the same class and division as the member whose place is to be filled, by a three-fourth vote of the entire Board of Review, the term of office of such newly elected member to be for the balance of the term of the replaced member.

(6) Members of the Board of Review as such shall not receive any salaries for their services except that each member in attendance at each meeting of the Board of Review within five minutes after the meeting has been called to order, shall receive the sum of $25 as an attendance fee.

SECTION 6D. PANEL. (1) The Panel designated in Section 6B shall consist of three Arbitrators appointed as provided in the Rules of the American Arbitration Association.

(2) All proceedings before the Panel shall be conducted in New York City.

(3) The Board of Directors shall adopt such regulations or take such other action as may be necessary or proper to carry into effect the foregoing provisions in conformity with the Rules of the American Arbitration Association.

SECTION 6E. CLASSIFICATION RECORDS. Records shall be maintained by the officers, committees, boards or panel of the Society dealing with the classification of members and distribution of revenues which will adequately apprise the respective members of the determination made and actions taken by such officers,

committees, boards and panel as to such members and the basis therefor.

SECTION 7. RELIEF COMMITTEES. There shall be appointed two Relief Committees, one a Publishers Relief Committee and one a Writers Relief Committee. Each Committee shall consist of three members of the Board of Directors, the Publishers Committee to consist of publisher members and the Writers Committee to consist of writer members. These Committees shall investigate the respective requests or applications for relief on behalf of a sick, infirm, needy or deserving member or his widow, infant children or indigent parent. Upon the recommendation of either such Committee the Board may ratify or direct the payment of such sum or sums as in its judgment will satisfy the immediate necessities of such person or persons, and to make advances, from any royalties thereafter to accrue to the member, such advances to be repaid to the Society by deducting the whole or any part thereof from any subsequent distributions awarded to such member.

The Board of Directors shall annually devote a part of the proceeds derived from its operations to the purpose of giving financial aid to members of the Society, their widows, infant children or indigent parents. The giving of such assistance is optional and shall only be granted in cases of urgent necessity, and the Society does not vouchsafe to its members the right to receive assistance. Any monies paid out on account of relief must always be entered in the books of the Society with a statement of the actual purpose for which they were disbursed, and not merely under the head of "Relief."

ARTICLE XV.

APPORTIONMENT OF ROYALTIES.

SECTION 1. All royalties and license fees collected by the Society shall be from time to time as ordered by the Board of Directors distributed among its members, provided, however:

(a) That all expenses of operation of the Society and sums payable to foreign affiliated Societies shall be deducted therefrom and duly paid; and

(b) That the Board of Directors, by two-thirds vote of those present at any regular meeting may add to the Reserve Fund any

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portion not exceeding 10% of the total amount available for distribution; and

(c) That the net amount remaining after such deduction for distribution shall be apportioned as follows: one-half (½) thereof to be distributed among the "Music Publisher" members, and one-half (½) among the "Composer and Author" members respectively.

Reserve Fund.

Section 2. The Board of Directors, by a two-thirds vote of all those present, shall have the right to create and from time to time to add to the reserve fund, and may direct that a portion of the royalties as and when collected be placed in such reserve fund.

Unclaimed Royalties.

Section 3. Royalties which have been apportioned and which have not been claimed by the owners shall remain in the General Fund of the Society for a period of six years. Three months prior to the expiration of said six years, notices shall be given to the parties lawfully entitled thereto, by registered mail, requiring them to receive said royalties within three months, and after the expiration of said three months, such royalties, if not claimed, shall become the absolute property of the Society.

ARTICLE XVI.

General Powers and Duties of Committees. Quorum of Committees.

Section 1. A majority of each committee shall constitute a quorum thereof.

Meetings of Committees.

Section 2. Each Committee, unless otherwise voted by the Committee, shall meet at least monthly upon a date to be fixed by the Committee, except during the months of July, August and September. The Secretary shall send notices of each meeting to the members thereof at least three days in advance of the meeting.

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ABSENCE OF MEMBER OF COMMITTEE.

SECTION 3. If any member of any Committee is absent from two successive meetings without an excuse presented to the Committee, his place may be declared vacant by the President.

MINUTES OF COMMITTEE.

SECTION 4. The standing committees shall keep regular minutes of their transactions and cause them to be recorded in a book kept in the office of the Society for that purpose, and report the same to the Board of Directors at its regular meetings.

ARTICLE XVII.

SPECIAL COMMITTEE.

Whenever any twenty-five members of the Society shall certify to the Board of Directors that they desire the Society to prosecute any matter within the scope of the Society, the President shall appoint a special committee to investigate the matter and report to the Board of Directors with its opinion thereon whether it is advantageous and for the best interest of the Society to undertake the prosecution of such matter. The Board of Directors shall carefully consider such report and a two-thirds vote of all the directors shall determine whether or not such prosecution shall be undertaken.

If the Board of Directors shall refuse to authorize the prosecution of such matter or to call a meeting of the general membership for the consideration of such matter by the general membership, then and in that event, upon written demand of not less than fifteen (15%) per cent of the publisher membership or of the writer membership, as the case may be, delivered to the President for a general meeting of the membership to consider such matter, the President shall call such general meeting to consider the same.

However, not more than two such meetings in any calendar year shall be required to be called by the President.

In case any action shall be required by such general membership in connection with the matters so submitted to it, such action shall be taken in the same manner, including the method of voting and the weighting thereof and the same number of votes shall be required as in the case of amendments, all as provided in Article XXI.

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ARTICLE XVIII.

General Meetings of the Society.

Section 1. The General Annual Meeting shall be held each year during the month of March. An additional General Membership Meeting shall be held in the month of October of each year. Special meetings may be called at any time by the Board of Directors.

Business Transacted at General Meetings.

Section 2. No business shall be submitted to the General Annual Meeting or the General Membership Meeting, unless it has been brought to the knowledge of the Board of Directors at least eight days in advance. Such General Meetings shall, however, be entitled in any event to lay aside any such business as they may consider inopportune.

Motion or Resolution in Writing.

Section 3. Every motion or resolution which shall be made or offered at any meeting of the Society shall, at the request of the Secretary, be reduced to writing and furnished to the Secretary before the question shall be put.

California Meetings.

Section 4. The President shall specify dates approximately thirty days before each of the two General Meetings of the Society on each of which dates a meeting will be held on the West Coast attended by the President or acting President, General Manager or Acting General Manager, and at least one member of the Executive Committee, to acquaint them with the activities of the Society during the period between meetings, to receive for consideration of the Board any recommendations offered and to make a full report of said meeting to the Board of Directors at its next monthly meeting.

ARTICLE XIX.

Notices.

Whenever notice is required to be given to any member, such notice shall not be required to be given by personal service, but such notice shall be deemed to have been given from and at

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the time when said notice in writing shall have been deposited in the Post Office, or in any regular United States mailing box in the City of New York, enclosed in a post-paid wrapper, addressed to the member at his last known place of residence, as the same shall appear upon the books of the Society, or if such address shall not appear upon the books of the Society, then to such address as may appear in any directory of the municipality in which he may reside or do business.

ARTICLE XX.

Expulsion and Termination of Rights of Membership. Suspension for Cause.

Section 1. Any member who is expelled by the Board of Directors, or who is dropped for the nonpayment of dues, fines or assessments, shall thereupon lose and forfeit any and all interest, right or claim in, to or under the Society, the property thereof, and the dues and assessments paid thereto. Upon expulsion, bankruptcy, insolvency or other severance of membership in, or connection with, the Society, all rights and interests of whatsoever character, sort or kind, to, of, in or concerning the Society by virtue of such membership, shall instantly cease and be of no further force and effect. Expulsion shall not relieve any member from his obligations to the Society up to the date of such expulsion.

Posthumous Membership.

Section 2. On the death of any member his rights in the Society, except as hereinafter provided, shall be vested in his heirs, legatees or other persons who have acquired, by will or under any law, the right, title and interest of the member in any of his musical works, including the right of public performance thereof. Such heirs, legatees or other persons shall receive a share in royalty distributions in accordance with the provisions of these Articles of Association and the applicable rules governing distribution.

In cases where the person (s) entitled to such share in royalty distributions is the deceased member's widow, widower, child, children, brother (s) or sister (s), as the case may be, such person (s) shall have the same voting power as "composer-author" members to the extent of such widow's, widower's, child's, children's,

brother (s)' or sister (s)' participation in the Society's distribution of domestic royalties during the previous calendar year but shall not be eligible to office in the Society. No other successor of a deceased composer-author shall be entitled to vote or hold office in the Society.

BANKRUPTCY OF MEMBER.

SECTION 3. The Board of Directors shall have the right to suspend payments of royalties to any member in case of the filing of a petition in bankruptcy by or against him, and/or the adjudication of such member a bankrupt, or the execution by such member of an assignment for the benefit of creditors, or the taking advantage by him of the insolvency laws of any State, Territory or Country, or the appointment of a receiver, trustee or liquidator of the assets and property of the member, or the voluntary or involuntary dissolution of a member.

The representative of any publisher member who shall be a member of the Board of Directors may upon the happening of any such contingencies be dropped from the Board of Directors in the sole discretion of the Board.

The royalties, or the right to participate in the royalties, and the rights of the members in the Society, shall not be sold or otherwise disposed of by any member, and shall not be the subject of sale or other disposition by voluntary action, operation of law, legal proceedings or otherwise, and no member shall sell, otherwise dispose of, hypothecate or create a lien upon any royalties accruing, or that may thereafter accrue to him, by virtue of his membership, or any of the rights, privileges, benefits, royalties or emoluments to which he may be entitled by virtue of his membership.

ARTICLE XXI.

AMENDMENTS.

(a) All proposed amendments to the Articles of Association may be brought before the general membership at the General Annual Meeting or the General Membership Meeting or before any special meeting of the general membership called by the Board of Directors for that purpose, provided that a written copy of such proposed amendment shall have been submitted to the Board of Directors at least eight days in advance of such meeting.

If, however, the Board of Directors shall disapprove of such proposed amendment, the same shall not be brought before the general membership for action unless the same shall have been or shall thereafter be requested by 15% of the publisher membership or of the writer membership, as the case may be, as provided in Article XVII hereof.

(b) Such proposed amendment shall be freely discussed at such meeting and promptly thereafter a ballot embodying such amendment shall be mailed to each and every member of the Society. The ballot shall be in such form as shall be approved by the Board of Directors. Ballots shall be consecutively numbered and shall provide a space for signature of the voting member. One ballot and one only shall be made available for the use of each active member in good standing except that lost, misplaced, mutilated or destroyed ballots may be replaced in the sole discretion of the Board of Directors or such committee as it may designate for that purpose.

One ballot shall be mailed to each such member at his last address as disclosed by the records of the Society promptly after the meeting at which the proposed amendment shall have been presented and discussed. Each such ballot shall be accompanied by a postage-prepaid envelope addressed to the Board of Directors or such officer or committee as it may designate.

Each qualified member may cast his vote by mail or by personal delivery. All votes must be thus cast and received not later than twenty days after the ballot shall have been mailed. Votes received after such twenty-day period shall not be counted.

The Board of Directors or any committee designated by it for that purpose shall appoint its choice of teller and shall make all rules for totaling, tabulating and counting the votes cast. It shall be privileged to call upon the management and staff of the Society for any required assistance.

(c) Publisher members shall vote as one group and composer-author members shall vote as one group, and the votes cast by each group shall each count for fifty (50%) per cent.

The voting rights of all members within their respective groups shall be weighted upon the same basis as in the case of election of Directors and as set forth in Article IV, Section 4, subdivision (h) thereof.

In order to effectuate the counting of each group for fifty (50%) per cent, the total votes cast in each group in favor of the amendment shall be divided by the total number of votes cast by each respective group and the fraction arrived at in the foregoing manner with respect to the composer-author member group and the fraction so arrived at with respect to the publisher-member group shall be added together. The result of such addition shall be divided by two (2).

If (a) such division shall result in a fraction representing two-thirds or more, and (b) such total number of votes cast by each respective group shall represent a majority of the total number of votes of all members of such respective group if all such members had exercised their right to vote, then such amendment shall be deemed to have been carried.

(d) The Board of Directors shall certify the result of such voting not later than thirty days after the expiration of the period within which ballots may be cast, that the amendment has carried or failed, as the case may be, and such amendment shall become effective immediately unless some other period shall have been stated in the amendment.

(e) All ballots, tally sheets and other memoranda incident to the tabulation of the votes shall be retained for three months and be available for examination by any committee of not less than five members in good standing.

ARTICLE XXII.

Indemnification of Directors and Officers.

The Society shall indemnify and hold harmless each person who has served or shall hereafter serve as a director or officer of the Society from and against any and all claims and liabilities to which such person shall have or may become subject by reason of his having heretofore or hereafter been a director or officer of the Society or by reason of any action alleged to have been heretofore or hereafter taken or omitted by him as such director or officers, and shall reimburse each such person for all legal and other expenses reasonably incurred by him in connection with any such claim or liability; provided, however, that no such person shall be indemnified against, or be reimbursed for any expense incurred in connection with, any claim or liability arising out of

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his own gross negligence or wilful misconduct. The rights accruing to any person under the foregoing provisions of this Article shall not exclude any other right to which he may be lawfully entitled, nor shall anything herein contained restrict the right of the Society to indemnify or reimburse such person in any proper case even though not specifically herein provided for. The Society, its directors, officers, employees and agents, shall be fully protected in taking any action or making any payment under this Article XXII, or in refusing so to do, in reliance upon the advice of counsel.

ARTICLE XXIII.

Definitions.

Section 1. The term "writer member" when used in these Articles of Association shall be deemed to refer to composer and author members.

Section 2. When the masculine pronoun "he" or "his" is used to refer to a member of the Society, such reference shall be deemed to be made to writer members of both sexes as well as to publisher members whether they be persons, co-partnerships, firms, associations or corporations.

ARTICLE XXIV.

Termination of Required Representation of Standard Writer Members and Standard Publisher Members.

Section 1. If at any general election for members of the Board of Directors held in any year, the aggregate of the weighted votes to which all the standard writer members as a group shall be entitled shall amount to fifty (50%) per cent or more of the aggregate of the weighted votes to which all the writer members shall be entitled, then and thereafter the right of the standard writer members to have any specified representation in accordance with the provisions of Article IV, Section 1 relating to the Board of Directors, Article IV, Section 4 relating to the Nominating Committees and Article XIV, Section 6c relating to the Board of Review, shall forever cease and terminate.

Section 2. If at any general election for members of the

Board of Directors held in any year, the aggregate of the weighted votes to which all the standard publisher members as a group shall be entitled shall amount to fifty (50%) per cent or more of the aggregate of the weighted votes to which all the publisher members shall be entitled, then and thereafter the right of the standard publisher members to have any specified representation in accordance with the provisions of Article IV, Section 1 relating to the Board of Directors, Article IV, Section 4 relating to the Nominating Committees and Article XIV, Section 6c relating to the Board of Review, shall forever cease and terminate.

ARTICLE XXV.

RESTRICTIONS ON ACTION FOR COPYRIGHT INFRINGEMENT.

(a) No member of the Society shall at any time, while a member of the Society or thereafter, institute, or threaten to institute, or maintain or continue any suit or proceeding for acts of copyright infringement relating to motion picture performance rights (1) alleged to have occurred prior to March 14, 1950, or (2) where corresponding synchronization rights have been granted prior to March 14, 1950.

(b) No member of the Society shall grant a synchronization or recording right for any musical composition to any motion picture producer unless the member or members in interest or the Society grants corresponding motion picture performance rights.

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CBS v. ASCAP

CX 2, Exhibit No. 10

Amended Consent Judgment, dated 3/14/50, U.S. v. ASCAP (Civil Action No. 13-95).

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AMENDED CONSENT JUDGMENT

AMERICAN SOCIETY OF

COMPOSERS, AUTHORS AND PUBLISHERS

CIVIL ACTION No. 13-95
ENTERED MARCH 14, 1950

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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, *Plaintiff,* v. AMERICAN SOCIETY OF COMPOSERS, AUTHORS AND PUBLISHERS, et al., *Defendants.*	Civil Action No. 13–95 AMENDED FINAL JUDGMENT

Plaintiff having filed its complaint herein on February 26, 1941, the defendants having appeared and filed their answer to the complaint denying the substantive allegations thereof, all parties having consented, without trial or adjudication of any issue of fact or law therein, to the entry of a Civil Decree and Judgment, filed March 4, 1941, and jurisdiction having been retained in this Court pursuant to Section VI of said Civil Decree and Judgment for the purpose of granting such modifications of the Civil Decree and Judgment as may be necessary and appropriate; and

Plaintiff having moved the Court that said Civil Decree and Judgment should be modified in certain respects, and all parties hereto consenting to such modifications and the entry of this Amended Final Judgment,

Now, THEREFORE, no testimony having been taken and without trial or adjudication of any issue of fact or law herein and without admission by any defendant in respect of any such issue and upon consent of all parties hereto, it is hereby

ORDERED, ADJUDGED AND DECREED that the Civil Decree and Judgment of March 4, 1941 be amended to read as follows:

I. This Court had jurisdiction of the subject matter hereof and of all parties hereto with full power to enter this Judgment. The complaint states a cause of action against the defendants under Section 1 of the Act of Congress of July 2, 1890, entitled "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies," commonly known as the Sherman Act, as amended.

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II. As used in this Judgment:

(A) "ASCAP" means the defendant American Society of Composers, Authors and Publishers;

(B) "Right of public performance" means the right to perform a copyrighted musical composition publicly for profit in a non-dramatic manner, sometimes referred to as "small performing right";

(C) "Motion picture performance right" means the right of public performance of music which is recorded in order to be performed in synchronism or timed relation to the exhibition of motion pictures;

(D) "ASCAP repertory" means those compositions the right of public performance of which ASCAP has or hereafter shall have the right to license or sublicense;

(E) "User" means any person, firm or corporation who or which (1) owns or operates an establishment or enterprise where copyrighted musical compositions are performed publicly for profit, or (2) is otherwise directly engaged in giving public performance of copyrighted musical compositions for profit, or (3) is entitled to obtain a license from ASCAP under Section V of this Judgment.

III. The provisions of this Judgment applicable to the defendant ASCAP shall apply to such defendant, its successors and assigns, and to each of their officers, directors, agents, employees, and to all other persons, including members, acting or claiming to act under, through or for such defendant. None of the injunctions or requirements herein imposed upon the defendants shall apply to the acquisition of or licensing of the right to perform musical compositions publicly for profit outside the United States of America, its territories or possessions, such acquisition or licensing being subject to the provisions of the Final Judgment entered this day in Civil Action No. 42-245.

IV. Defendant ASCAP is hereby enjoined and restrained from:

(A) Holding, acquiring, licensing, enforcing, or negotiating concerning any rights in copyrighted musical compositions other than rights of public performance on a non-exclusive basis;

(B) Limiting, restricting, or interfering with the right of

any member to issue to a user non-exclusive licenses for rights of public performance;

(C) Entering into, recognizing, enforcing or claiming any rights under any license for rights of public performance which discriminates in license fees or other terms and conditions between licensees similarly situated;

(D) Hereafter granting any license for rights of public performance in excess of five years' duration, except for motion picture performance rights which are licensed pursuant to Section V (C) of this Judgment;

(E) Granting to, enforcing against, collecting any monies from, or negotiating with any motion picture theatre exhibitor concerning any motion picture performance rights;

(F) Instituting or threatening to institute, or maintaining or continuing any suit or proceeding (1) against any motion picture theatre exhibitor for copyright infringement relating to motion picture performance rights or (2) against any user for copyright infringement of any musical composition not contained in the ASCAP repertory. After the preparation of the list required to be maintained by Section XIV herein, the repertory shall be deemed to consist of only those compositions appearing on such list;

(G) Restricting the right of any member to withdraw from membership in ASCAP at the end of any fiscal year upon (1) giving three months' advance written notice to ASCAP, and (2) agreeing that his resignation shall be subject to any rights or obligations existing between ASCAP and its licensees under then existing licenses and to the rights of the withdrawing member accruing under such licenses;

(H) Asserting or exercising any right or power to restrict from public performance for profit by any licensee of ASCAP any composition in order to exact additional consideration for the performance thereof, or for the purpose of permitting the fixing or regulating of fees for the recording or transcribing of such composition. Nothing in this Subsection shall be construed to prevent ASCAP, when so directed by the member in interest in respect of a musical composition, from restricting performances of a composition in order reasonably to protect the composition against indiscriminate performances, or the

value of the public performance for profit rights therein, or the dramatic performing rights therein, or to prevent ASCAP from restricting performances of a composition so far as may be reasonably necessary in connection with any claim or litigation involving the performing rights in any such composition.

V. Defendant ASCAP is hereby ordered and directed to issue, upon request, licenses for rights of public performance of compositions in the ASCAP repertory as follows:

(A) To a radio broadcasting network, telecasting network or wired music service (as illustrated by the organization known as "Muzak"), on terms which authorize the simultaneous and so-called "delayed" performance by broadcasting or telecasting, or simultaneous performance by wired music service, as the case may be, of the ASCAP repertory by any, some or all of the stations in the United States affiliated with such radio network or television network or by all subscriber outlets in the United States affiliated with any wired music service and do not require a separate license for each station or subscriber for such performances;

(B) To a manufacturer, producer or distributor of a transcription or recordation of a composition in ASCAP's repertory which is or shall be recorded for performance on specified commercially sponsored radio programs or television programs, as the case may be, on an electrical transcription or on other specially prepared recordation intended for radio broadcasting or for television broadcasting purposes (or to any advertiser or advertising agency on whose behalf such transcription or recordation shall have been made) of the right to authorize the broadcasting, by radio or by television, as the case may be, of the recorded composition by means of such transcription or recordation by all radio stations or television stations in the United States enumerated by the licensee, without requiring separate licenses for such enumerated stations for such performance;

(C) To any person engaged in producing motion pictures (herein referred to as a "motion picture producer"), so long as ASCAP shall not have divested itself of such rights, a single license of motion picture performance rights covering the United States, its territories and possessions, without requiring further licenses. Such single license shall be issued in accordance with

the following requirements and in accordance with all other provisions of this Judgment not inconsistent therewith:

(1) Such license shall be limited to pictures produced or in production not later than one year after the effective date of the license, and shall not make any charge for any performance occurring prior to the date of this Judgment;

(2) Upon written request of any motion picture producer such licenses shall be issued on a "per film" basis for the compositions in such film which are in the ASCAP repertory;

(3) All licenses of motion picture performance rights under this Subsection (C) shall be negotiated with and issued to individual motion picture producers, and not on an "industry-wide" basis;

(4) Where within a period of nineteen (19) months prior to the entry of this Judgment a motion picture producer has obtained a license for motion picture performance rights directly from members of ASCAP and has paid a separately stated amount therefor, such licenses issued by ASCAP covering motion picture performance rights shall, at the request of such producer, include the rights conveyed by the previous license, in which event ASCAP shall allow the motion picture producer a credit against the amount otherwise payable, equal to the amount paid under the previous license;

(5) No writer or publisher member of the Board of Directors of ASCAP shall participate in or vote on any question relating to the negotiation, execution, performance or enforcement of any such license where such member at the time, directly or indirectly, has any pecuniary interest in any motion picture producer, in any subsidiary or affiliate of any motion picture producer, or in any contractual relationship with any such producer.

VI. Defendant ASCAP is hereby ordered and directed to grant to any user making written application therefor a non-exclusive license to perform all of the compositions in the ASCAP repertory. Defendant ASCAP shall not grant to any user a license to perform one or more specified compositions in the ASCAP repertory, unless both the user and member or members in interest shall have requested ASCAP in writing so to do, or unless ASCAP, at the written request of the prospec-

tive user shall have sent a written notice of the prospective user's request for a license to each such member at his last known address, and such member shall have failed to reply within thirty (30) days thereafter.

VII. Defendant ASCAP, in licensing rights for public performance for radio broadcasting and telecasting, is hereby:

(A) Enjoined and restrained from issuing any license, the fee for which

(1) in the case of commercial programs, is based upon a percentage of the income received by the licensee from programs which include no compositions in the ASCAP repertory, or

(2) in the case of sustaining programs, does not vary in proportion either (a) to the performance of compositions in the ASCAP repertory during the term of the license, or (b) to the number of programs on which such compositions or any of them are performed,

unless the radio broadcaster or telecaster to whom such license shall be issued shall desire a license on either or both of such bases;

(B) Ordered and directed to issue to any unlicensed radio or television broadcaster, upon written request, per program licenses, the fee for which

(1) in the case of commercial programs, is, at the option of ASCAP, either (a) expressed in terms of dollars, requiring the payment of a specified amount for each program in which compositions in the ASCAP repertory shall be performed, or (b) based upon the payment of a percentage of the sum paid by the sponsor of such program for the use of the broadcasting or telecasting facilities of such radio or television broadcaster,

(2) in the case of sustaining programs, is at the option of ASCAP, either (a) expressed in terms of dollars, requiring the payment of a specified amount for each program in which compositions in the ASCAP repertory shall be performed, or (b) based upon the payment of a percentage of the card rate which would have been applicable for the use of its broadcasting facilities in

connection with such program if it had been commercial, and

(3) subject to the other provisions of Section VIII, takes into consideration the economic requirements and situation of those stations having relatively few commercial announcements and a relatively greater percentage of sustaining programs, with the objective that such stations shall have a genuine economic choice between per program and blanket licenses;

(C) Enjoined and restrained from requiring or influencing the prospective licensee to negotiate for a blanket license prior to negotiating for a per program license.

VIII. Defendant ASCAP, in fixing its fees for the licensing of compositions in the ASCAP repertory, is hereby ordered and directed to use its best efforts to avoid any discrimination among the respective fees fixed for the various types of licenses which would deprive the licensees or prospective licensees of a genuine choice from among such various types of licenses.

IX. (A) Defendant ASCAP shall, upon receipt of a written application for a license for the right of public performance of any, some or all of the compositions in the ASCAP repertory, advise the applicant in writing of the fee which it deems reasonable for the license requested. If the parties are unable to agree upon a reasonable fee within sixty (60) days from the date when such application is received by ASCAP, the applicant therefor may forthwith apply to this Court for the determination of a reasonable fee and ASCAP shall, upon receipt of notice of the filing of such application, promptly give notice thereof to the Attorney General. In any such proceeding the burden of proof shall be on ASCAP to establish the reasonableness of the fee requested by it. Pending the completion of any such negotiations or proceedings, the applicant shall have the right to use any, some or all of the compositions in the ASCAP repertory to which its application pertains, without payment of any fee or other compensation, but subject to the provisions of Subsection (B) hereof, and to the final order or judgment entered by this Court in such proceeding;

(B) When an applicant has the right to perform any compositions in the ASCAP repertory pending the completion of any negotiations or proceedings provided for in Subsection (A)

hereof, either the applicant or ASCAP may apply to this Court to fix an interim fee pending final determination of what constitutes a reasonable fee. If the Court fixes such interim fee, ASCAP shall then issue and the applicant shall accept a license providing for the payment of a fee at such interim rate from the date of the filing of such application for an interim fee. If the applicant fails to accept such license or fails to pay the interim fee in accordance therewith, such failure shall be ground for the dismissal of his application. Where an interim license has been issued pursuant to this Subsection (B), the reasonable fee finally determined by this Court shall be retroactive to the date the applicant acquired the right to use any, some or all of the compositions in the ASCAP repertory pursuant to the provisions of this Section IX;

(C) When a reasonable fee has been finally determined by this Court, defendant ASCAP shall be required to offer a license at a comparable fee to all other applicants similarly situated who shall thereafter request a license of ASCAP, but any license agreement which has been executed without any Court intervention between ASCAP and another user similarly situated prior to such determination by the Court shall not be deemed to be in any way affected or altered by such determination for the term of such license agreement;

(D) Nothing in this Section IX shall prevent any applicant or licensee from attacking in the aforesaid proceedings or in any other controversy the validity of the copyright of any of the compositions in the ASCAP repertory nor shall this Judgment be construed as importing any validity or value to any of said copyrights.

X. No officer or director of ASCAP, or any person acting on its behalf, shall participate in or vote on any question relating to any transaction or negotiation involving ASCAP and a licensee, or prospective licensee, where such officer, director, or other person has any pecuniary interest in such licensee or prospective licensee, or in any subsidiary or affiliate thereof, or in any contractual relationship with any such licensee or prospective licensee.

XI. Defendant ASCAP is hereby ordered and directed to distribute to its members the monies received by licensing rights of public performance on a basis which gives primary considera-

tion to the performance of the compositions of the members as indicated by objective surveys of performances (excluding those licensed by the member directly) periodically made by or for ASCAP.

XII. Defendant ASCAP is hereby ordered and directed, within three months after the entry of this Judgment, to provide in its Articles of Association, effective as of the date of this Judgment, that ASCAP's members be prohibited from:

(A) At any time, while a member of ASCAP or thereafter, instituting, or threatening to institute, or maintaining or continuing any suit or proceeding for acts of copyright infringement relating to motion picture performance rights (1) alleged to have occurred prior to the date of this Judgment, or (2) where corresponding synchronization rights have been granted prior to the date of this Judgment;

(B) While a member of ASCAP, granting a synchronization or recording right for any musical composition to any motion picture producer unless the member or members in interest or ASCAP grants corresponding motion picture performance rights in conformity with the provisions of this Judgment.

XIII. In order to insure a democratic administration of the affairs of defendant ASCAP, and to assure its members an opportunity to protect their rights through fair and impartial hearings based on adequate information, defendant ASCAP is hereby ordered and directed to provide in its Articles of Association:

(A) That the members of the Board of Directors shall be elected by a membership vote in which all author, composer and publisher members shall have the right to vote for their respective representatives to serve on the Board of Directors. Due weight may be given to the classification of the member within ASCAP in determining the number of votes each member may cast for the election of directors. Elections for the entire membership of the Board of Directors shall take place annually or every two years. The Board of Directors shall, as far as practicable, give representation to writer members and publisher members with different participations in ASCAP's revenue distributions;

(B) That the general basis of member classification for voting and revenue distribution purposes shall be set forth in

writing and shall be made available to any member upon request;

(C) That any member may appeal from the final determination of his classification by any ASCAP committee or board to an impartial arbiter or panel;

(D) That records be maintained by the officers, committees, or boards of ASCAP, and the impartial arbiters or panels referred to in Subsection (C) of this Section dealing with the classification of members and distribution of revenues, which will adequately apprise the respective members of the determinations made and actions taken by such officers, committees and boards of ASCAP, and arbiters or panels as to such members and the basis therefor.

XIV. Immediately following entry of this Judgment, defendant ASCAP shall upon written request from any prospective user inform such user whether any compositions specified in such request are in the ASCAP repertory, and make available for public inspection such information as to the ASCAP repertory as it has. Defendant ASCAP is furthermore ordered and directed to prepare within two years, and to maintain and keep current and make available for inspection during regular office hours, a list of all musical compositions in the ASCAP repertory, which list will show the title, date of copyright and the author, composer and current publisher of each composition.

XV. Defendant ASCAP is hereby ordered and directed to admit to membership, non-participating or otherwise,

(A) Any composer or author of a copyrighted musical composition who shall have had at least one work of his composition or writing regularly published;

(B) Any person, firm, corporation or partnership actively engaged in the music publishing business, whose musical publications have been used or distributed on a commercial scale for at least one year, and who assumes the financial risk involved in the normal publication of musical works.

XVI. For the purpose of securing compliance with this Amended Final Judgment, duly authorized representatives of the Department of Justice shall upon the written request of the Attorney General or an Assistant Attorney General, and on

reasonable notice to defendant, be permitted (a) reasonable access, during the office hours of said defendant, to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of said defendant, relating to any of the matters contained in this Amended Final Judgment; (b) subject to the reasonable convenience of said defendant and without restraint or interference from it, to interview officers or employees of said defendant, who may have counsel present, regarding any such matters; and said defendant, on such request, shall submit such reports in respect of any such matters as may from time to time be reasonably necessary for the proper enforcement of this Judgment, provided, however, that information received by the means permitted in this Section XVI shall not be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Department of Justice, except in the course of legal proceedings in which the United States is a party or as otherwise required by law.

XVII. Jurisdiction of this cause is retained for the purpose of enabling any of the parties to this Amended Final Judgment to make application to the Court for such further orders and directions as may be necessary or appropriate in relation to the construction of or carrying out of this Judgment, for the modification thereof, for the enforcement of compliance therewith and for the punishment of violations thereof.

It is expressly understood, in addition to the foregoing, that the plaintiff may, upon reasonable notice, at any time after five (5) years from the date of entry of this Amended Final Judgment apply to this Court for the vacation of said Judgment, or its modification in any respect, including the dissolution of ASCAP (and any time within two (2) years from said date apply to this Court for the vacation or modification of Section V (C) hereof). During the applicable periods specified above, defendant ASCAP is hereby ordered and directed to conduct its affairs, including the making of agreements to acquire or license the rights of public performance, so as not unreasonably to complicate or delay the enforcement of any such further relief requested by plaintiff and granted by this Court pursuant to the terms of this Section.

XVIII. This Amended Final Judgment shall become effective from the date of entry hereof, except that the provisions of

Sections IV (G), XIII and XV shall become effective three months after the date of entry hereof, and the provisions of Section XI shall become effective eight months after the date of entry hereof. This Amended Final Judgment supersedes the Civil Decree and Judgment entered herein on March 4, 1941, but shall not be construed to make proper or lawful or sanction any acts which occurred prior to the date hereof which were enjoined, restrained or prohibited by said Civil Decree and Judgment of March 4, 1941.

Approved:

March 14, 1950

HENRY W. GODDARD
United States District Judge

We hereby consent to the entry of the foregoing Judgment.

For the plaintiff

SIGMUND TIMBERG
Special Assistant to the
Attorney General

WILLIAM D. KILGORE, JR.

HAROLD LASSER
Special Attorneys

HERBERT A. BERGSON
Assistant Attorney General

MELVILLE C. WILLIAMS
Special Assistant to the
Attorney General

IRVING H SAYPOL
United States Attorney

For the defendants

ROBERT P. PATTERSON

HERMAN FINKELSTEIN

OSCAR COX

Schwartz & Frohlich
By LOUIS D. FROHLICH

Judgment entered:

WILLIAM V. CONNELL
Clerk
March 14, 1950

E 138



CBS v. ASCAP

CX 2, Exhibit No. 11

Order, dated 1/70/60, and attachments as amended to date in U.S. v. ASCAP (Civil Action No. 13-95).

E 140

United States District Court

Southern District of New York

UNITED STATES OF AMERICA, *Plaintiff*, v. AMERICAN SOCIETY OF COMPOSERS, AUTHORS AND PUBLISHERS, et al., *Defendants.*	Civil Action No. 13-95

ORDER

Plaintiff having filed its Complaint herein on February 26, 1941, the parties having consented to the entry of a Civil Decree and Judgment filed March 4, 1941, and the parties having consented to the entry of an Amended Final Judgment on March 14, 1950 (hereinafter referred to as the "Judgment"),

NOW, THEREFORE, no testimony having been taken and without trial or adjudication of any issue of fact or law herein and without admission by any party in respect of any such issue, the Court having heard the parties and upon consent of all parties hereto, it is hereby

ORDERED, ADJUDGED and DECREED as follows:

I

In carrying out the provisions of subsection (G) of Section IV of the Judgment ASCAP shall provide that any writer or publisher member who resigns from ASCAP and

whose works continue to be licensed by ASCAP by reason of the continued membership of a co-writer, writer or publisher of any such works, may elect to continue receiving distribution for such works on the same basis and with the same elections as a member would have, so long as the resigning member does not license the works to any other performing rights licensing organization for performance in the United States. The Society may require a written acknowledgment from such resigning member that the works have not been so licensed. In any event, a resigning member shall receive distribution from the Society on the basis of performances made under licenses in effect at the time of the member's resignation. Anything to the contrary notwithstanding, the Society may, at its option, deny resigning members the right to receive payment on any basis other than a current performance basis as defined in Section III and "Attachments A and B" of this Order, provided that such option must be exercised as to all resigning members alike.

II

ASCAP shall carry out the provisions of Section XI of the Judgment concerning surveys of performances, as follows:

(A) ASCAP shall conduct or cause to have conducted a census and/or a scientific sample of the performances of the compositions of its members. Such census and/or scientific sample shall be made in accordance with the design made and periodically reviewed by an independent and qualified person or firm. Any such sample shall be selected randomly and shall be properly weighted by the use of sample blow-up multipliers determined by dividing the total number of hours of performance in each sampling cell being sampled by the number of hours actually sampled. The depth of sample may differ among strata, sub-strata or sampling cells, and shall be determined for each by considerations of sampling efficiency. Economic multipliers

shall be applied to the results of the samples and census to reflect the dollar revenue to ASCAP of performances in the various strata. The economic multipliers will be applied to the survey findings of the sample independently and separately from sample blow-up multipliers. Furthermore, the economic multipliers to be applied to the performances estimated by the sample shall be based upon the proportion of ASCAP's dollar receipts derived from the licensees or group of licensees from which the performances emanate. For this purpose licensees (or performances) may be grouped so as to reflect differences in economic value of performances insofar as practical, taking into account the added costs and complexity of finer classifications. Economic multipliers for radio and television network broadcasts may vary systematically to reflect variation in the economic value of the audience as reflected by ASCAP's dollar revenue. In determining the revenue from radio and television network broadcasts, ASCAP may take into consideration the revenue received from affiliated station announcements adjacent to and reasonably attributable to network programs carried by the affiliate. ASCAP shall endeavor to obtain logs of performances prepared by such local radio and television stations as the surveying organization deems necessary (1) to reduce non-identifications from tape recordings of performances (an effort must be made to reduce non-identifications on any half hour of continuous programming containing more than three unidentified feature performances by requesting the station to furnish a log if available) and to supplement the survey of performances where such identification is difficult, *e.g.*, foreign language stations, good music stations, background music stations; and (2) to test and correct the accuracy of the surveys made by means of tape recordings.

(B) After eighteen months from date of entry of this Order plaintiff may seek additional relief in respect to the provisions of this Section, including the scope, size or ac-

curacy of the survey. In any such proceeding the plaintiff need show only that the survey is not established or is not being conducted in accordance with generally accepted principles of scientific surveying or sampling, that the economic multipliers do not adequately reflect the dollar value to ASCAP of performances in the various strata, or that the sample is not of sufficient size or accuracy to permit a reasonably accurate distribution of ASCAP's revenues on the basis of its results. In such proceeding the Court may consider the cost of such additional relief.

(C) The Court, after hearing the recommendation of the plaintiff and the views of the defendant, shall appoint a qualified independent person, not an employee of either of the parties, who periodically as is necessary shall examine the design and conduct of the survey, make estimates of the accuracy of the samples, and report thereon to the Court and the parties. ASCAP shall pay the salary and reasonable expenses of such person.

III

Defendant ASCAP shall carry out the provisions of Section XI of the Judgment concerning distribution to its members, as follows:

(A) As to ASCAP's domestic revenues, beginning with the effective date of this Order, each writer member shall be given the option of electing to receive distribution (i) on a current performance basis under Plan II as described in Part II of Attachment A or (ii) on the basis of Plan I described in Part I of Attachment A. Failure to elect shall be deemed an election to receive on the basis of Plan I. Election to receive distribution on a current performance basis must be made in writing and, if delivered to ASCAP not later than 30 days after the effective date of this Order, it shall apply to distributions based on performance credits recorded during the fiscal survey year commencing Octo-

ber 1, 1959 and the fiscal survey years thereafter to which the election is applicable. New writer members are to be given the option to make such election within thirty days of receiving notification of the acceptance of their membership application. In addition, writer members shall have the following options:

(1) A writer member who has elected to receive distribution under Plan I shall have an annual option to cancel such election effective for credits recorded in any succeeding fiscal survey year.

(2) A writer member who has elected to receive distribution under Plan II shall at any time after two years have one option to cancel such election effective for credits recorded in the subsequent fiscal survey year; thereafter should such writer member, within the period of the next five years, again elect to return to Plan II pursuant to the option given in paragraph (1) of this subsection (A), such election shall be binding for a period of five years.

(3) All elections and cancellations of elections shall be made by written notice delivered to ASCAP not later than 30 days before the first day of the fiscal survey year during which the performance credits applicable to such election are recorded and to which such election or cancellation of election is applicable.

(B) Notwithstanding the provisions of subsection (A) above, ASCAP may promulgate a rule withholding the option to receive distribution on a current performance basis from the group of writer members, reasonably calculated not to exceed 100, having the highest average performance credits recorded in the five preceding fiscal survey years, provided that, within three months after the entry of this Order, in a vote held for such purpose, such rule is approved by a majority vote of such writer members. For purposes of this paragraph, a majority vote must include

both (1) the votes of a majority of the writer members who cast ballots and (2) the votes of the writer members holding a majority of all performance credits during the five latest preceding fiscal survey years for which records are available out of the total number of such performance credits held by all writer members who cast ballots.

At any time not earlier than three years after the date of entry of this Order, upon written request signed by (1) the Assistant Attorney General or (2) either 25% of the number of writer members then subject to such rule, or 25 such writer members, whichever is fewer, or (3) writer members having 25% of the performance credits in the latest available five preceding fiscal survey years out of the total number of performance credits of all writer members subject to such rule, a new vote shall be held to determine whether a majority, as defined above, of the group of writer members subject to such rule adhere to the determination that no current performance option should be available to such group, provided that nothing contained herein shall require ASCAP to hold such a vote upon a request by members more frequently than once every three years.

For purposes of this subsection (B), all successors of a deceased writer member shall be regarded as a single writer member, and the vote or request of the successors holding a majority interest shall be deemed to be the vote or request of such single writer member; in case no affirmative or negative vote or no request is received from the successors holding a majority interest, such single writer member shall be disregarded for purposes of all votes or requests under this subsection.

(C) Each publisher member shall be given the option of electing to receive distribution on a current performance basis as set forth in subsection (D) below and in Plan II of the "Publishers' Distribution Formula," which is attached hereto and marked "Attachment B," or on the basis of Plan I of such "Publishers' Distribution Formula."

Failure to elect shall be deemed an election to receive distribution on the basis of Plan I. Election to receive distribution under Plan II must be made in writing and delivered to ASCAP not later than 30 days before the first day of any fiscal survey year and shall apply to distributions based on performance credits recorded during said fiscal survey year and subsequent years, except that an election applicable to the fiscal survey year starting October 1, 1959 may be made not later than 30 days after the effective date of this Order. Any publisher member who has elected to receive distribution under Plan I shall thereafter have the option of electing to receive distribution under Plan II by written notice delivered to ASCAP not later than 30 days before the first day of any fiscal survey year and said publisher member's distribution thereafter shall be based on performance credits recorded during the following fiscal survey year and subsequent years. New publisher members are to be given the option to make such election within 30 days after receiving notification of the acceptance of their membership applications.

(D) Any publisher member electing to receive distribution on a current performance basis shall receive distribution (based on the performance credits recorded during fiscal survey years following his election) equal to the following percentages of what such publisher would have received if all publisher distributions for the same survey period had been made on a current performance basis:

Performances recorded during the fiscal survey year commencing October 1, 1959	75%
Performances recorded during the fiscal survey year commencing October 1, 1960	80%
Performances recorded during the fiscal survey year commencing October 1, 1961	85%
Performances recorded during the fiscal survey year commencing October 1, 1962	90%

Performances recorded during the fiscal survey year commencing October 1, 1963 ..... 95%

Performances recorded during the fiscal survey year commencing October 1, 1964 and subsequent years 100%

(E) As to the revenue received by ASCAP from foreign sources, ASCAP shall make distribution to its writer and publisher members on a current performance basis. If the revenue from any source exceeds $200,000 per annum and to the extent that the reports furnished to ASCAP by such source allocate credit in reasonably identifiable form separately by compositions performed and indicate the members in interest, such distribution shall be made on the basis of performances of the compositions of its members as reported by such foreign source; otherwise, such distribution shall be made on the basis of the most reliable information ASCAP has as to foreign performances generally.

(F) ASCAP shall not promulgate any rules making distinctions as to the amount of credit given to various works or performances except as set forth in the "Weighting Rules" attached hereto and marked "Attachment C".

(G) ASCAP shall grant no performance credits to any member for performances of compositions occurring after they are in the public domain, provided, however, that ASCAP may grant performance credits to either a publisher member or a writer member, or both, for performances of copyrighted arrangements of public domain works where the recipient of the performance credit holds a valid existing copyright covering said arrangement.

(H) ASCAP may make distributions to writers who are not members of the Society with respect to their compositions published by ASCAP members, provided that performing rights in such compositions (1) have not been granted to any other performing rights licensing organization for performance in the United States, or (2) if

granted, shall have been released by such organization. Any such distributions shall be computed on a current performance basis under Plan II as described in Part II of Attachment A hereof.

IV

ASCAP shall carry out the provisions of subsections (A) and (B) of Section XIII of the Judgment concerning the number of votes which each member may cast for the election of directors, or for the amendment of the Society's Articles of Association, as follows:

(A) If ASCAP chooses to weight the votes of its members it shall do so on the basis of the current performance credits received by each member in the latest available fiscal survey year preceding each election and in the manner set forth in subsection (B) below, with the proviso that no member shall have more than 100 votes. A member receiving no performance credits during the preceding fiscal survey year need not receive any votes whatsoever.

(B) The votes of each member shall be calculated in accordance with the following formulae, subject to the limitation that no member shall have more than 100 votes:

(1) *Writer Members:* Each writer member who has received any performance credits in the latest available preceding fiscal survey year shall have one vote, plus (i) one vote for each 1,000 credits up to 20,000 credits, plus (ii) one vote for each 2,000 credits from 20,001 to 26,000 credits, plus (iii) one vote for each 3,000 credits from 26,001 to 35,000 credits, plus (iv) one vote for each 4,000 credits from 35,001 to 51,000 credits, plus (v) one vote for each 5,000 credits from 51,001 to 101,000, plus (vi) one vote for each 6,000 credits in excess of 101,000 credits.

(2) *Publisher Members:* Each publisher member who has received any performance credits in the latest

available preceding fiscal survey year shall have one vote, plus (i) one vote for each 4,000 credits up to 100,000 credits, plus (ii) one vote for each 8,000 credits from 100,001 credits to 140,000 credits, plus (iii) one vote for each 12,000 credits from 140,001 to 200,000 credits, plus (iv) one vote for each 16,000 credits from 200,001 to 408,000, plus (v) one vote for each 20,000 credits in excess of 408,000 credits.

The above formulae shall be kept current in the following manner. The number of writer and publisher performance credits respectively yielded by the ASCAP survey ended September 30, 1958 shall be calculated. This number shall be divided into the number of writer and publisher performance credits respectively yielded by the survey in the latest available fiscal survey year preceding the election in question. The resulting figures, rounded to the nearest tenth, for the writer members and publisher members respectively, shall be used as multipliers on each of the numbers above which is underlined.

(C) If at any time there is an increase of more than 10% in the percentage of the total publisher votes represented by the ten publisher members and "groups of affiliated publisher members"(as that term is used in ASCAP's Articles of Association in force on the date of this Order) having the highest number of publisher votes, the weighting of votes as set forth in subsection (B) above shall be charged to bring such publishers within 10% of such percentage, in default of which the Court shall on application of the plaintiff make an appropriate order to accomplish that result.

(D) In any election for the Board of Directors the nominees for directors shall include, in addition to those nominees chosen by any ASCAP committee or board, any person eligible to be a director who is designated by a petition subscribed to by 25 or more of the members of ASCAP entitled to elect such director.

(E) Any group of writer members entitled to cast one-twelfth of the votes of all ASCAP writer members, or any group of publisher members entitled to cast one-twelfth of the votes of all publisher members, shall be allowed to elect any eligible person a director by signing a petition and presenting such petition to ASCAP at least 90 days before the date of any scheduled election for the directors of the ASCAP Board. In such event, the number of directors to be elected in the general election shall be reduced by the number of directors so elected by petition, and all ASCAP members signing such petitions shall not be entitled to vote in the general election or to sign more than one petition in advance of any general election.

(F) An election or directors shall be held within one year after the effective date of this Order. All directors shall be elected at the same time and the number of directors shall not be less than 24.

V

Defendant ASCAP shall carry out the provisions of subsections (B), (C) and (D) of Section XIII of the Judgment, as follows:

(A) Defendant ASCAP shall supply to each member a copy of this Order and attachments hereto together with any rule or regulation hereinafter promulgated which in any way affects the member's voting rights and rights in the ASCAP distribution.

(B) A list of all members and their mailing addresses shall be maintained and kept current by ASCAP and at the written request of any member, who has been a member for at least one year, shall be made available for inspection and copying during regular office hours by such member or any authorized representative of such member, provided, however, that if any member instructs ASCAP in writing not to make his address available, ASCAP shall

not be required to permit inspection of such address but will forward to such member unopened any mail addressed to such member in care of ASCAP.

(C) ASCAP shall within nine months after the end of each fiscal survey year prepare alphabetical lists of all compositions which received performance credits during said year, showing the number of credits received by each composition. In addition ASCAP shall maintain records showing, for each composition which received performance credits as a theme or as background, cue or bridge music during said fiscal survey year, the number of feature performance credits received by said composition during the preceding five fiscal survey years. Any member or his authorized agent may inspect such lists and records with respect to his own compositions, and other portions of such lists and records shall be available for further inspection by any member or his authorized agent to the extent that such inspection is sought in good faith in connection with any financial interest of such member as a member. All other records of the Society relating to the distribution by ASCAP to its members shall be open for inspection by any member or his authorized agent, for good cause, provided that such member shall have been a member of ASCAP for at least one year prior to his request for such inspection.

(D) ASCAP shall, within six months after the entry of this Order, establish a special board, elected in the same manner as are the members of the Board of Directors, which shall have jurisdiction in the first instance over every complaint by a member relating to the distribution of ASCAP's revenues to such member or to any rule or regulation of the Society directly affecting the distribution of the Society's revenues to such member. Such complaint must be filed by the aggrieved member within nine months of the receipt by him of his annual statement or of the rule or regulation on which such complaint is founded and the relief which the special board may grant in terms

of monetary payment shall not extend back beyond the period of time covered by such annual statement, provided, however, that if the alleged injustice was such that the aggrieved party would not reasonably be put on notice of it by his annual statement, the relief given may reach back as far as, in the opinion of the special board, is required to do justice to all parties. The special board shall set forth in detail its findings of fact and the grounds of its decision. Each member shall have a direct right of appeal from any decision made by such board to an impartial panel of the American Arbitration Association. In any appeal to such impartial panel from an adverse decision by such board, the appellant may seek to have the order, rule or regulation involved properly interpreted or applied, to have errors rectified, or to void such rule or regulation on grounds of its discriminatory or arbitrary character. Any additional amounts finally determined by the decision of such board (or, in the case of any appeal, by such panel) to be due to a member with respect to the distribution complained of by such member and all subsequent distributions to the date of the decision shall be paid to the member promptly after the rendering of such decision.

(E) Stenographic transcripts of each proceeding before the special board shall at the request of any member be supplied by ASCAP at cost. If the Society itself requires or makes any use of the transcript, the member shall pay only the cost of making a second copy. ASCAP shall without cost make available to any member at his request copies of the final decisions of such board or panel, and periodically furnish summaries of all final decisions to all members.

VI

In regard to the provisions of Section XV of the Judgment:

(A) In the event that any person whose application for

membership has previously been denied between March 14, 1950 and the date of this Order shall within one year after the date of first publication pursuant to subsection (B) hereof request reconsideration of his application or shall submit a new application for membership, ASCAP shall reconsider such application and if, upon such reconsideration, ASCAP shall determine that such person meets the requirement set forth in Section XV of the Judgment, ASCAP shall forthwith admit such person to membership, non-participating or otherwise, retroactively to the date of the original application or March 14, 1950, whichever is later, provided that (1) such person shall be found to have met the applicable requirements for membership at the time of such original application and (2) such person shall not in the interim have granted to any other person or organization the right to license public performances in the United States, of any of such person's copyrighted musical compositions upon which his qualification for membership is based.

(B) Defendant ASCAP shall, in each year following the entry of this Order, issue a public statement and cause the same to be published on two separate occasions in *Variety* and *Billboard*, stating that it will accept as members all applicants meeting the requirements set forth in Section XV of the Judgment.

(C) Where an applicant for membership meets the requirements set forth in Section XV of the Judgment, ASCAP shall not refuse membership to such applicant on the ground that the ASCAP survey has failed to record any performance of the applicant's works. Where an applicant fails to meet the requirements set forth in Section XV, ASCAP shall inform the applicant specifically wherein his application fails to meet said requirements and ASCAP shall not mention whether its survey has or has not failed to record any performances of the applicant's works unless the applicant has specifically requested said information.

VII

(A) ASCAP is ordered and directed within three months after the entry of this Order to submit to its membership any portions of this Order as to which the consent of the membership is required by the Articles of Association of ASCAP, and the Board of Directors of ASCAP shall recommend to said members that said consent be given. If the required consent is given, within ten days thereafter ASCAP shall file with this Court a statement of that fact and the date of filing shall be the effective date of this Order.

(B) This Order shall be vacated without prejudice to either party if within three months from the date of entry of this Order the required consent of the membership has not been obtained as to all matters as to which such consent is required by the Articles of Association of ASCAP.

Dated: January 7, 1960.

SYLVESTER J. RYAN
United States District Judge

We hereby consent to the making and entry of the foregoing order.

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ATTACHMENT A

(As amended by orders of the Court dated November 15, 1960, September 4, 1963, September 15, 1965, and September 12, 1966)

PART I

Plan I

The following rules shall govern any distribution under Plan I referred to in subsection (A) of Section III of the Order:

(a) At least 20% of the funds distributed under such a plan shall be distributed on the basis of the individual writer member's current performance credits during the applicable preceding four fiscal survey quarter years.

(b) At least 30% of the funds distributed under such a plan shall be distributed on the basis of the individual writer member's average performance credits during the latest available preceding five fiscal survey years. ASCAP may, however, limit the rise in such payments for one year by not more than one-half of any increase for any writer member; ASCAP may limit any fall in such payments by assigning one-third of the fall in the first year, another third in the second year, and the remaining third in the third year, except that if a writer member's average performance points as calculated for October 1960 are less than his sustained performance points as calculated for October 1959, ASCAP may limit the applicable fall by assigning one-fourth of the fall in October 1960, another fourth in October 1961, another fourth in October 1962, and the remaining fourth in October 1963.

(c) Not more than 30% of the funds distributed under any such plan may be distributed on the basis of the individual writer member's average performance

credits attributable to performances of his "recognized works" during the latest available preceding five fiscal survey years. A "recognized work" is a composition which has received performance credits in the ASCAP survey at least four quarters prior to the quarter in which the performance occurs. Works performed at any time after receiving feature performance credits equal in number to the average number of feature performance credits received in each of the five latest available fiscal survey years by the fifty ASCAP works appearing for the first time in the survey and having the highest number of feature performance credits in each such year, shall receive credit as recognized works. Works performed at any time after receiving feature performance credits in excess of one-half of such average and up to such average shall receive one-half of a recognized works performance credit for each performance credit in excess of one-half of such average and up to such average. ASCAP may limit the rise in such payments for one year by not more than one-half of any increase for any writer member; ASCAP may limit any fall in such payments by assigning one-third of the fall in the first year, another third in the second year, and the remaining third in the third year, except that if a writer member's recognized works performance points as calculated for October 1960 are less than his availability points as calculated for October 1959, ASCAP may limit the applicable fall by assigning one-fourth of the fall in October 1960, another fourth in October 1961, another fourth in October 1962, and the remaining fourth in October 1963. Where a writer member's recognized works performance points as calculated for October 1960 are less than such writer member's availability points as calculated for October 1959, such writer member's availability points for October 1959 shall be deemed to be the higher of his sustained performance

points or his availability points as calculated at that time.

(d) Not more than 20% of the funds distributed under such a plan may be distributed on a basis of the average of the individual writer member's annual ratings for not more than 10 years multiplied by his length of membership in ASCAP. No writer member may be given credit for more than 42 years of membership. Annual ratings may be computed separately for each fiscal survey year on the basis of the writer member's current performance credits for such year, and, with respect to writer members having 39,000 or more current performance credits in a fiscal survey year, rules may be adopted for computing annual ratings which will have the effect of such writer members' receiving lower annual ratings than they would if their annual ratings were computed on the same basis as the annual ratings of all other writer members receiving distributions under this paragraph (d), provided that all writer members having a like number of current performance credits for any such year shall receive the same annual ratings for that year.

(e) In computing the five-year averages called for in paragraphs (b) and (c) and the ten-year average annual ratings called for in paragraph (d) hereof, performance credits recorded during years when the member received payment on a current performance basis shall not be considered. In computing a member's length of membership in the Society for purposes of any payments made under the provisions of paragraph (d) hereof, the number of years during which the member received payment on a current performance basis shall be subtracted from the number of years he has actually been a member of the Society. Notwithstanding the foregoing, in the case of a new writer member who elects to receive distributions on

a current performance basis effective from the date he became a member and who, thereafter, cancels such election effective for distributions based on performances not later than the beginning of the fourth full fiscal survey year following the earliest quarterly period considered in computing distributions to such new writer member, (i) performance credits recorded during the intervening years when the new member received payment on a current performance basis may be considered in computing the averages called for in paragraphs (b), (c) and (d) hereof, and (ii) the intervening years during which the new member received payment on a current performance basis may be included in computing the new member's length of membership for purposes of any payments made under the provisions of paragraph (d) hereof.

(f) Pararaphs (b), (c) and (d) above need not apply to the not more than approximately 100 writer members with the highest five-year average performance credits in the Society referred to in subsection (B) of Section III of the Order, nor to other writer members having either 39,000 or more average performance credits or 39,000 or more average performance credits attributable to performances of recognized works, so long as such other writer members shall have the option to receive distributions on a current performance basis under Plan II. This exemption shall apply if the rules substituted therefor will have the effect of such writer members' receiving as a group substantially less money per performance credit than they would if paid on the basis of current performance credits.

PART II

Plan II: Current Performance Option

The following rules shall govern the current performance

option referred to in subsection (A) of Section III of the Order:

(a) For any fiscal survey year covered by an election to receive distribution under the current performance option, an electing writer member shall receive, for his current performance credits up to 39,000 (or such higher number as ASCAP shall determine from time to time but not less than the five-year average performance credits of the writer member with the lowest such average of those writer members covered by subsection (B) of Section III of the Order) a distribution which bears the same relationship to the total distributable writers' share of ASCAP's revenue as such performance credits in the applicable preceding four fiscal survey quarter years bear to the total performance credits of all ASCAP writer members for such period.

(b) For all credits in excess of such number of such writer member for such year, he shall receive distribution under the rules of Plan I described in Part I hereof, provided, however, that if an option to elect to receive distribution under this Plan II is not withheld pursuant to subsection (B) of Section III of the Order from the approximately 100 writer members with the highest five-year average performance credits, he shall receive the same distribution for each credit in excess of such number as he receives for each credit up to such number.

PART III

Before making the calculations referred to in Parts I and II above, ASCAP may first deduct an amount not exceeding 5% of the total distributable writers' share of ASCAP's revenue for the purpose of making special awards to writer members whose works have a unique pres-

tige value for which adequate compensation would not otherwise be received by such writer members, and to writer members whose works are substantially performed in media not surveyed by ASCAP. 30 days prior to payment of any such awards, ASCAP shall send to all of its writer members a list of all recipients of such awards and the amount awarded to each.

PART IV

The Writers' Distribution Formula submitted herewith shall be deemed initially to comply with the provisions of Section III of the Order and this Attachment A, and may not be amended without 30 days prior written notice to the plaintiff.

ATTACHMENT B

(As amended by orders of the Court dated November 15, 1960 and September 15, 1965)

Publishers' Distribution Formula

Current Performance Payment

(A) Distributions for each fiscal distribution year shall be made on the basis of performance credits recorded for the applicable fiscal survey year. During such fiscal distribution year, quarterly distributions on account shall be made based on the performance credits recorded for the quarters of such fiscal survey year for which computations are available. Such quarterly distributions on account shall be made and adjusted as provided below.

(B) The distribution for the first quarter of the fiscal distribution year shall be computed by dividing the total distributable revenue for such quarter by the total performance credits received during the October-December quarter of the applicable fiscal survey year by publishers receiving distributions pursuant to this Plan, with the result being the value of a performance credit. Each publisher shall receive an amount equal to the number of performance credits of such publisher in such October-December quarter, multiplied by the value of a performance credit.

(C) The distribution for the second quarter of the fiscal distribution year shall be computed in the same manner, except that the computations shall be based on the cumulative six-month total distributable revenue for the first and second quarters and on the cumulative six-month performance credits for the October-December and January-March quarters of the applicable fiscal survey year, with the

amount payable to each publisher to be adjusted by deducting the amount previously paid to such publisher on account for such fiscal distribution year.

(D) The distribution for the third quarter shall be computed in the same manner, except that nine-month cumulative totals will be used.

(E) The distribution for the fourth quarter shall be computed in the same manner, except that twelve-month cumulative totals will be used.

Resigning Members

If, in the case of a resigning publisher member, the Society shall continue to have the right to license the performing rights in the United States to a work or works of such publisher as a result of continued membership in the Society of one or more of the members in interest with respect to such work or works, and if no other performing rights licensing organization has any such right, distributions shall continue to be made to such resigning member subsequent to his resignation from the Society—for so long as the Society retains such licensing right, and no other performing rights licensing organization has any such right—on the basis of performance credits recorded for such work or works. The Society may require such resigning member to acknowledge that the Society retains such right and that no other performing rights licensing organization has any such right. In the event such resigning member fails so to acknowledge, such resigning member shall not be entitled to any payment pursuant to these provisions. Anything to the contrary notwithstanding, the Society may, at its option, deny resigning publisher members the right to receive payment on any basis other than a current performance basis as provided above, provided that such option shall be exercised as to all resigning publisher members alike.

With respect to all other works of the resigning publisher member, distributions shall continue to be made to such resigning member subsequent to his resignation from the Society on the following basis:

(1) An amount shall be calculated based on performance credits recorded for such works, such amount to be calculated in all respects in accordance with the provisions hereinbefore set forth;

(2) Such amount shall be separated into two portions, the first of which shall bear the same ratio to the entire amount as the sum of radio and television revenues received by the Society bears to the aggregate of all revenues received by the Society during the preceding fiscal year, and the second of which shall bear the same ratio to the entire amount as the sum of revenues received by the Society from sources other than radio and television bears to the aggregate of all revenues received by the Society during the preceding fiscal year;

(3) The first portion shall be distributed to such resigning member on the basis of performances made under radio and television licenses made prior to the resignation of such member;

(4) The second portion shall be distributed for four quarterly distributions after the resignation of such member (and not thereafter), the first such distribution to be equal to the full amount of such portion, the second such distribution to be equal to 75% of such portion, the third such distribution to be equal to 50% of such portion, and the fourth such distribution to be equal to 25% of such portion.

ATTACHMENT C

(As amended by orders of the Court dated April 6, 1962, September 4, 1963, September 15, 1965, September 12, 1966, February 4, 1969, and October 10, 1969)

Weighting Rules

In awarding credit for a performance appearing in the Society's survey, no distinction shall be made on the basis of the identity or use of the work performed, except as provided in these Weighting Rules.

(A) As used in these Weighting Rules:

(1) *"Theme"* shall mean a musical work used as an identifying signature of a radio or television personality or of all or part of a radio or television program or series of programs. A musical work (other than a jingle) used in conjunction with an advertising, promotional or public service announcement shall receive the same credit as a theme.

(2) *"Background Music"* shall mean mood atmosphere or thematic music performed as background to some non-musical subject matter being presented on a radio or television program. A vocal or a visual instrumental rendition which is a principal focus of audience attention shall not be regarded as background music regardless of the context in which performed.

(3) *"Jingle"* shall mean an advertising, promotional or public service announcement containing musical material (with or without lyrics), where (a) the musical material was originally written for advertising, promoitonal or public service announcement purposes or (b) the performance is of a musical work, originally written for other purposes, with the lyrics changed for advertising, promotional or public service

announcement purposes with the permission of the ASCAP member or members in interest.

(4) *"Cue Music"* shall mean music used on a radio or television program to introduce, but not to identify, a personality or event thereon. The term "cue music" includes, but is not limited to, introductions, "play-ons" and "play-offs".

(5) *"Bridge Music"* shall mean music used on a radio or television program as a connective link between segments or portions thereof.

(6) *"Use"* shall mean a performance of a composition reported by the ASCAP survey.

(7) (a) *"Feature Performance"* shall mean any performance which is a principal focus of audience attention and which constitutes a musical subject matter on a radio or television program and is not a performance as a theme, jingle, background, cue or bridge music. A visual instrumental or vocal performance shall be presumed to be a feature performance unless such performance is as a theme or a jingle or is not a principal focus of audience attention.

(b) *"Visual Instrumental Performance"* shall mean a performance by a musician or musicians who are seen by the television viewing audience.

(c) *"Vocal Performance"* shall mean the performance of the lyrics of a composition or the on-camera humming or whistling of the music of a composition.

(d) *"Musical Subject Matter"* shall mean the presentation in a program of an activity (i) which normally involves the performance of music—such as singing, playing a musical instrument, or dancing (including skating in a manner akin to dancing or ballet), and (ii) in which such music is the music written for or used in the original presentation as the work being sung, played, or danced to.

(8) *"Performance Credit"* shall mean the unit of measure of the results of the survey, being derived by multiplying uses or fractional uses by the applicable sampling and economic multipliers.

(B) Each feature performance is to be awarded one use credit, except as provided herein and in subsections (D) and (E) hereof. Fractional use credit may be awarded to compositions performed as a theme or jingle or as background, cue or bridge music, or performances of copyrighted arrangements of works in the public domain.

(1) ASCAP may make distinctions in the amount of credit awarded to various works for similar uses when used as themes or as background, cue or bridge music, provided that such distinctions shall be based solely on the number of feature performance credits received by the work prior to the fiscal survey year for which credit is to be awarded as provided in paragraph (3) below.

(2) Such distinctions for similar uses as themes or cue or bridge music shall not be of a greater ratio than 5 to 1. In the case of background music, such distinction shall not be of a greater ratio than 5 to 2 between works qualifying under paragraph (3) below and nonqualifying works which have been commercially published for general public distribution and sale or of which commercial recordings have been made as "singles" for general public distribution and sale, and in either event five feature playings of which have been recorded in the ASCAP local radio sample survey during the five preceding fiscal survey years; other nonqualifying works when used as background music may be awarded credit on a durational basis as provided in paragraph (3) below. There shall be no distinction in the amount of credit for use of compositions as jingles.

(3) Such distinctions shall be based upon compliance with both of the following tests for maximum

credit (subject to the provisions of paragraph (5) below):

(a) a number of accumulated feature performance credits (not to exceed 20,000 credits since January 1, 1943 for a fully qualifying work), and

(b) a number of feature performance credits (not to exceed 2,500) in the five latest available preceding fiscal survey years, toward which there may be a limit of not more than 30% of such number of credits to be counted in any one year.

A work performed as a theme and which complies with the requirements of subparagraph (b) of this paragraph (3) shall receive 75% or 50% of such maximum credit if it has accumulated 75% or 50% respectively, of the number of accumulated feature performance credits required by subparagraph (a) of this paragraph (3). Background music on each program receiving credit on a durational basis shall receive, for each three minutes' duration in the aggregate for that program, 27.5% of a use credit; fractions of three minutes shall be computed on the basis of 5.5% for each thirty-six seconds or major fraction thereof.

(4) Until five years of records of feature performances are available, the number of feature performance credits required pursuant to subparagraph (b) of paragraph (3) above shall be reduced proportionately to the number of years available. For a work whose first surveyed performance occurred within the five latest available preceding fiscal survey years, the requirement of said subparagraph (b) shall be satisfied when the work has met the requirements of subparagraph (a) of paragraph (3) above and shall continue to be satisfied if in each subsequent year of such five years the work receives one-fifth the number of feature performance credits required by said subparagraph (b).

(5) ASCAP shall promulgate rules providing that:

(a) Any work first performed before January 1, 1943 shall satisfy the requirements of subparagraph (a) of paragraph (3) above if the title of the work appears in the publication *Variety Music Cavalcade,* Prentice-Hall 1952 or among the top ten on the "Lucky Strike Hit Parade" or the top ten on the weekly list of the most popular songs published in *Variety* or *Billboard.*

(b) If any work first performed on or after January 1, 1943 has received the number of performance credits required pursuant to subparagraph (a) of paragraph (3) above in the two consecutive fiscal survey years commencing with the year in which its first performance is recorded in the survey, or if the title of such work appears in the publication *Variety Music Cavalcade,* Prentice-Hall 1952, or among the top ten on the "Lucky Strike Hit Parade" or the top ten on the weekly list of the most popular songs published in *Variety* or *Billboard,* there shall be a rebuttable presumption that such performance credits recorded before October 1, 1955 reflect feature performances; otherwise, the burden shall be on the member to establish that performance credits recorded before October 1, 1955 reflect feature performances.

(C) The number of performance credits needed to meet any requirement pursuant to paragraph (3) above is premised on an annual total of approximately 25,000,000 performance credits recorded in the ASCAP survey; performance credits in years when the total number of performance credits recorded in the ASCAP survey was 20% greater or smaller than that number shall be adjusted proportionately.

(D) ASCAP may promulgate rules limiting the credit to be awarded (a) to multiple performances of the same

work or aggregate performances of all works on a single program or during a period of programming or on a continuing series of the same program which is presented two or more times per week, or (b) to individual performances of a work in conjunction with an advertising or promotional announcement sponsored by the network or station on which it appears. ASCAP may make distinctions on the basis of the length of the performance or on whether it was a vocal or a visual instrumental performance, or on whether the work is written or published by persons regularly associated with the program on which such performances are rendered.

(E) Multiple use credits may be awarded for performances of works which require four minutes or more for a single, complete rendition thereof, and such credit may be limited to certain works, *e.g.*, those which in their original form were composed for a choral, symphonic, or similar concert performance (including chamber music). Performances of concerts by symphony orchestras on national radio network sustaining programs may be awarded credit equal to performances on a network of a specified number of stations (*e.g.*, 50 stations). ASCAP may also distribute to its members, for performances of their works in concert and symphony halls, amounts in excess of the license fees it receives from such licensees (*e.g.*, five times said license fees).

(F) ASCAP may promulgate rules limiting the crediting of performances of works of a member on programs for which the music information is prepared by such member or by a person associated with such member and which, on the basis of available data, appears to be inaccurate and where video tapes or other audio-visual recordings are not available.

(G) ASCAP may promulgate rules providing for additional credit for works performed as themes on a television musical or variety program where the performance

is rendered on-camera either vocally, instrumentally or by dancer(s) and constitutes a principal focus of audience attention.

(H) The Weighting Formula submitted herewith shall be deemed initially to comply with all of the provisions of the Order and this Attachment C, and may not be amended without 30 days prior written notice to the plaintiff.

Writers' Distribution Formula

The writers' distributable revenues shall be computed for each calendar quarter, and distribution of such revenues shall be made during the month of January (or the preceding December), April, July or October, as the case may be, next following such calendar quarter. Such distribution shall be made by dividing the total distributable revenues for the quarter (after deducting distributions to members exercising the current performance election provided in Section VII hereof) into the following four funds:

I. Current Performance Fund (20% of the total);

II. Average Performance Fund (40% of the total);

III. Recognized Works Performance Fund (20% of the total); and

IV. Membership Continuity Fund (20% of the total); and by distrib ting each such fund in accordance with the following rules:

I. *Current Performance Fund*

(A) Distribution to each writer member (hereinafter called "writer") from this fund shall be based on the number of performance credits of such writer recorded during the latest annual period of October 1 through September 30 for which computations are available (such period being referred to in these rules as the "latest preceding fiscal survey year"). For the quarterly distributions commencing October 1965, distribution from this fund shall be based on performances in the following survey periods:

Distribution	Survey Period
Oct. 1965 through April 1966	Oct. 1963 through Sept. 1964
July 1966 through Dec. 1966	Oct. 1964 through Sept. 1965
April 1967	July 1965 through June 1966
July 1967 through Oct. 1967	Oct. 1965 through Sept. 1966
December 1967	April 1966 through March 1967

Beginning with the April 1968 distribution, and for each quarterly distribution thereafter, distributions from this fund shall be based on the four most recent available fiscal survey quarter years.

(B) The amount to be distributed to each writer shall be equal to the number of such performance credits of such writer, multiplied by the cash value of a performance credit. The cash value of a performance credit for any calendar quarter shall be computed by dividing the dollar amount of the Current Performance Fund for such quarter by the aggregate number of performance credits of all writers receiving distribution pursuant to Sections I through IV hereof.

II. *Average Performance Fund*

(A) Distribution to each writer from this fund shall be based on the average performance credits of such writer, determined by aggregating all performance credits received by such writer during the five latest preceding fiscal survey years and dividing such aggregate by five.

(B) In October of each year, each writer shall, for purposes of determining the distribution to be made to such writer from the Average Performance Fund during the year beginning with such October, be assigned a number of average performance points determined by dividing by 40 his average performance credits, as calculated pursuant to the preceding paragraph, provided that every writer having more than 38,999 average performance credits shall be assigned average performance points as follows commencing with the October 1968 distribution:

Credits	Points	
39,000 to 47,999	975	
48,000 to 55,999	1000	plus one (1) point for each 80 average performance credits in excess of 48,000.
56,000 to 64,999	1100	plus one (1) point for each 90 average performance credits in excess of 56,000.
65,000 to 74,999	1200	plus one (1) point for each 100 average performance credits in excess of 65,000.
75,000 to 96,999	1300	plus one (1) point for each 110 average performance credits in excess of 75,000.
97,000 to 336,999	1500	plus one (1) point for each 120 average performance credits in excess of 97,000.
337,000 to 596,999	3500	plus one (1) point for each 130 average performance credits in excess of 337,000.
597,000 and over	5500	plus one (1) point for each 140 average performance credits in excess of 597,000.

(C)(1) In the event that a writer's average performance points, as calculated for October 1960 without regard to the provisions of this subsection (C), shall be less than such writer's sustained performance points as calculated for October 1959, the point decrease actually assigned to such writer in October 1960 shall be one-fourth of such difference, a second fourth of such difference shall be assigned to such writer in October 1961, a third fourth of such difference shall be assigned to such writer in October 1962 and the remaining fourth of such difference shall be assigned to such writer in October 1963. In the event that a writer's average performance points, as calculated for any particular October beginning with October 1961 without regard to the provisions of this subsection (C), shall be less than such writer's average performance points as calculated for the preceding October without regard to the provisions of this subsection (C), the point decrease actually assigned to such writer in the particular October shall be one-third of such difference, a second third of such difference shall be assigned to such writer in the next succeeding October and the remaining third of such difference shall be assigned to such writer in the second succeeding October.

(2) The provisions of this subsection shall be applied cumulatively.

(3) The provisions of this subsection (C) shall not be applied to limit decreases in average performance points from the preceding October to the particular October where the decrease is from Class 1000 or above to Class 975. In the event that a writer's average performance points, as calculated without regard to the provisions of this subsection (C), would be decreased from Class 1000 or above to a class below 975, the provisions of this subsection (C) shall be applied to the point difference between Class 975 and the lower class to which such writer would be assigned if the provisions of this subsection (C) were disregarded.

(D) The amount to be distributed to each writer from the Average Performance Fund for any quarter shall be an amount equal to such writer's average performance points, as calculated in accordance with the foregoing provisions, multiplied by the cash value of an average performance point, except that in the case of a writer whose average performance points are 1,000 or over in the October 1968 distribution any point increase actually assigned to such writer for that distribution and for the next three quarterly distributions shall be equal to one-half of the difference between such average performance points and the average performance points which would have been assigned to him under the schedule of credits and points in effect in October 1967; and further except that in the case of a deceased writer whose average performance points are 1000 or over in the October 1968 distribution or in any October distribution thereafter subsequent to death, the number of points to be assigned to the successor to the membership shall be increased as follows:

(a) for the distribution year beginning October 1968, or for the first distribution year after death (whichever is later) by an amount which is equal to one-half (½) of the percentage specified below of the difference between the member's average performance points determined in accordance with subsection (B), and the average performance points which would have been assigned to the member but for the proviso in subsection (B) which limits the number of points that may be assigned to members having more than 38,999 credits, and

(b) for the distribution year beginning October 1969, or for the second distribution year after death (whichever is later) and subsequent distribution years by an amount which is equal to the full percentage of such difference specified below for such respective years.

Class	Percentage
5250 and over	50%
4250 to 5249	45%
3250 to 4249	40%
3000 to 3249	37½%
2750 to 2999	35%
2500 to 2749	32½%
2250 to 2499	30%
2000 to 2249	27½%
1750 to 1999	25%
1400 to 1749	20%
1200 to 1399	15%
1100 to 1199	10%
1000 to 1099	5%

The cash value of an average performance point shall be computed by dividing the dollar amount of the Average Performance Fund for such quarter by the aggregate number of average performance points of all writers receiving distribution pursuant to Sections I through IV hereof.

III. *Recognized Works Performance Fund*

Distribution to each writer from this fund shall be determined in all respects in the same manner as distributions from the Average Performance Fund, except that the calculation shall be based solely on performance credits of such writer attributable to performances of recognized works, and except that "recognized works performance points" and "availability points" shall be substituted for the terms "average performance points" and "sustained performance points" where applicable. Where a writer member's recognized works performance points as calculated for October 1960 are less than such writer member's availability points as calculated for October 1959, such writer member's availability points for October 1959 shall

be deemed to be the higher of his sustained performance points or his availability points as calculated at that time. "Recognized works" are defined as works which are performed at any time after the expiration of four quarters commencing with the quarter in which a performance of such work shall first have been recorded in the Society's survey. Works performed at any time after receiving feature performance credits equal in number to the average number of feature performance credits received in each of the five latest available fiscal survey years by the fifty ASCAP works appearing for the first time in the survey and having the highest number of feature performance credits in each such year, shall receive credit as recognized works. Works performed at any time after receiving feature performance credits in excess of one-half of such average and up to such average shall receive one-half of a recognized works performance credit for each performance credit in excess of one-half of such average and up to such average.

IV. *Membership Continuity Fund*

(A) Distribution to each writer from this fund shall be based upon the number of continuity points of such writer, determined by multiplying (1) the number of continuous quarters of such writer's membership in ASCAP, but in no event more than 168 quarters, and (2) the average of such writer's annual ratings for each of the preceding ten fiscal survey years, computed separately for each year by dividing each member's performance credits for such year by 40, provided that every writer having more than 38,999 performance credits in any year shall be assigned an annual rating for that year as follows:

Performance Credits				Annual Rating
from	39,000	to	49,999	975
"	50,000	"	62,499	1000

Performance Credits			Annual Rating
from	62,500 to	74,999	1025
"	75,000 "	99,999	1050
"	100,000 "	124,999	1075
"	125,000 "	199,999	1100
"	200,000 "	299,999	1200
"	300,000 "	449,999	1300
"	450,000 "	599,999	1400
over	600,000		1500

and that commencing with the survey year which began October 1, 1963, such annual ratings shall be assigned as follows:

Performance Credits		Annual Rating
39,000 to 49,999	975	points
50,000 to 59,999	1000	points plus one (1) point for each 100 performance credits in excess of 50,000
60,000 to 449,999	1100	points plus one (1) point for each 200 performance credits in excess of 60,000
450,000 and over	3050	points plus one (1) point for each 250 performance credits in excess of 450,000

and that commencing with the survey year which began October 1, 1968, such annual ratings shall be assigned as follows:

Performance Credits		Annual Rating
39,000 to 47,999	975	points
48,000 to 55,999	1000	points plus one (1) point for each 80 average performance credits in excess of 48,000.

Performance Credits		Annual Rating
56,000 to 64,999	1100	points plus one (1) point for each 90 average performance credits in excess of 56,000.
65,000 to 74,999	1200	points plus one (1) point for each 100 average performance credits in excess of 65,000.
75,000 to 96,999	1300	points plus one (1) point for each 110 average performance credits in excess of 75,000.
97,000 to 336,999	1500	points plus one (1) point for each 120 average performance credits in excess of 97,000.
337,000 to 596,999	3500	points plus one (1) point for each 130 average performance credits in excess of 337,000.
597,000 and over	5500	points plus one (1) point for each 140 average performance credits in excess of 597,000.

(B) The amount to be distributed to each writer from the Membership Continuity Fund for any calendar quarter shall be an amount equal to the continuity points of such writer, multiplied by the cash value of a continuity point, except that in the case of a deceased writer whose continuity points are based on annual ratings which average 1000 or over in the October 1964 distribution or in any October distribution thereafter subsequent to death, the number of

points to be assigned to the successor to the membership shall be increased as follows:

(a) For the distribution year beginning Octobe 1964, or for the first distribution year after death (whichever is later) by an amount which is equal to one-half (½) of the percentage specified below of the difference between the member's continuity points based on the average of his annual ratings determined in accordance with subsection (A), and the continuity points which would have been assigned to the member but for the proviso in subsection (A) (2) which limits the annual rating that may be assigned to members having more than 38,999 credits in any year, and

(b) For the distribution year beginning October 1965, or for the second distribution year after death (whichever is later) and subsequent distribution years by an amount which is equal to the full percentage of such difference specified below for such respective years.

Average of Annual Ratings	Percentage
1500	50%
1400 to 1499	45%
1300 " 1399	40%
1200 " 1299	30%
1100 " 1199	25%
1075 " 1099	20%
1050 " 1074	15%
1025 " 1049	10%
1000 " 1024	5%

Commencing with the survey year which began October 1, 1963, such annual ratings and percentages shall be as follows:

Average of Annual Ratings	Percentage
3650 and over	50%
3050 to 3649	45%

Average of Annual Ratings	Percentage
2300 to 3049	40%
2050 " 2299	35%
1800 " 2049	30%
1425 " 1799	25%
1300 " 1424	20%
1175 " 1299	15%
1100 " 1174	10%
1000 " 1099	5%

Commencing with the survey year which began October 1, 1968, such annual ratings and percentages shall be as follows:

Average of Annual Ratings	Percentage
5250 and over	50%
4250 to 5249	45%
3250 " 4249	40%
3000 " 3249	37½%
2750 " 2999	35%
2500 " 2749	32½%
2250 " 2499	30%
2000 " 2249	27½%
1750 " 1999	25%
1400 " 1749	20%
1200 " 1399	15%
1100 " 1199	10%
1000 " 1099	5%

The cash value of a continuity point shall be computed by dividing the dollar amount of the Membership Continuity Fund for such quarter by the aggregate number of continuity points of all writers receiving distribution pursuant to Sections I through IV hereof.

V. *New Members*

In the case of a new writer member of the Society, distribution shall be calculated in accordance with the fore-

going rules or in accordance with Section VII hereof, whichever is applicable, except as hereinafter provided in this Section V:

(A) For purposes of distributions to a new writer member there shall be included the three fiscal survey quarter years (plus any remaining fraction of a quarter year) prior to notification by the Society of the acceptance of his membership application to the extent that performances of his works included in the Society's repertory following his election to membership are recorded in the Society's survey.

(1) In computing the first quarterly distribution to such new writer member, the performance credits, if any, recorded for such writer in the earliest fiscal survey quarter year which serves as a basis of distribution to such writer in accordance with this subsection (A) shall be multiplied by four;

(2) In computing the second quarterly distribution to such new writer member, the performance credits, if any, recorded for such writer in the two earliest fiscal survey quarter years which serve as a basis of distribution to such writer in accordance with this subsection (A) shall be multiplied by two;

(3) In computing the third quarterly distribution to such new writer member, the performance credits, if any, recorded for such writer in the three earliest fiscal survey quarter years which serve as a basis of distribution to such writer in accordance with this subsection (A) shall be multiplied by one and one-third (1⅓);

(4) In computing the fourth quarterly distributi to such new writer member, and each quarterly distribution thereafter, the performance credits, if any, recorded in the four most recent available fiscal survey quarter years shall be used in computing the new member's current performance credits;

Provided that the maximum number of performance credits resulting from the application of the foregoing multiples shall not exceed the "current performance election maximum" as set forth in Section VII hereof.

(B) The Society may accelerate all or part of the distributions to a new writer member for performance credits received pursuant to subsection (A) above and performance credits recorded during his first two years of membership, provided that all new writer members are treated alike.

(C) The average performance and recognized works performance points for a new writer member who, upon election to membership, does not elect to receive distribution on a current performance basis shall be determined:

(1) For the first October in which the basis of computation of such points includes performance credits in a fiscal survey year including any part of the period of time referred to in subsection (A) above, by aggregating performance credits for that fiscal survey year and dividing by three.

(2) For the next succeeding October, by aggregating performance credits for the two latest preceding fiscal survey years and dividing by four.

(3) For the next succeeding October, by aggregating performance credits for the three latest preceding fiscal survey years and dividing by five.

(4) For the next succeeding October, by aggregating performance credits for the four latest preceding fiscal survey years and dividing by five.

(5) For the next succeeding October, by aggregating performance credits for the five latest preceding fiscal survey years and dividing by five.

(D) In the case of a new writer member who, upon election to membership, elects to receive distributions on a

current performance basis in accordance with Section VII hereof:

Not later than thirty (30) days prior to the commencement of either the third or the fourth full fiscal survey year following the earliest quarterly period considered in computing distributions to such new writer member in accordance with subsection (A) above, such new writer member may cancel such election, effective for distributions based on performances recorded in the next full fiscal survey year, by notifying the Society in writing of such cancellation. In such event, distributions to such new writer in the Current Performance Fund, the Average Performance Fund, the Recognized Works Performance Fund and the Membership Continuity Fund shall be computed as follows:

(1) In the Current Performance Fund, such new writer member's distributions shall be based on performances in the four most recent available fiscal survey quarter years.

(2) In the Average Performance Fund and in the Recognized Works Performance Fund such writer's standing shall be computed

(a) for the first October in which such writer receives distribution from such funds, by aggregating performances credits applicable to each such fund recorded for such writer for the not more than four latest preceding fiscal survey years and dividing by five;

(b) for the next succeeding October and each October thereafter, by aggregating performance credits applicable to each such fund recorded for such writer for the not more than five latest preceding fiscal survey years and dividing by five.

(3) In the Membership Continuity Fund such writer's annual ratings shall be computed for each

of the fiscal survey years for which distribution has been made to such writer, and shall be multiplied by the number of continuous quarters of such writer's membership in ASCAP since his election to membership.

VI. *Special Awards*

Notwithstanding any of the foregoing provisions, in calculating the total distributable revenues to be be placed in the four funds referred to in Section I through IV above or distributed pursuant to Section VII below, there may first be deducted an amount not exceeding 5% of such revenues prior to such deduction, for the purpose of making special awards to writers whose works have a unique prestige value for which adequate compensation would not otherwise be received by such writers, and to writers whose works are performed substantially in media not surveyed by the Society. The distribution of such awards shall be determined by an independent panel appointed for that purpose by the writer members of the Board of Directors, and 30 days prior to payment pursuant to any such awards, the Society shall send to all of its writer members a list of all recipients of such awards and the amount awarded to each.

VII. *Current Performance Election*

A writer who, at the time, is below Class 1000 in either the Average Performance Fund or the Recognized Works Performance Fund, may elect to receive distributions calculated in accordance with the following provisions:

(A) For any fiscal survey year covered by such election, an electing writer shall receive, for each current performance credit up to the number which is equal to the number of five-year average performance credits of the writer with the lowest such average in Class 1000 in the Average Per-

formance Fund (hereafter called "the current performance election maximum"), an amount equal to the cash value of the total writers' distributable revenue divided by the total number of performance credits of all writer members during the applicable preceding four fiscal survey quarter years. (Any amounts distributed under this subsection shall be deducted before dividing the total writers' distributable revenue into the Current Performance, Average Performance, Recognized Works Performance, and Membership Continuity Funds.)

(B) If an electing writer receives in any fiscal survey year covered by such election more performance credits than "the current performance election maximum" he shall be paid for credits in excess thereof under Sections I through IV hereof, provided that in computing such payment:

(1) the total number of current performance credits and credits attributable to recognized works recorded for such writer during such fiscal survey year shall be deemed to be his average performance credits and average recognized works performance credits, respectively, for purposes of determining his classifications in the Average Performance and Recognized Works Performance Funds; the provisions of subsection (C) of Section II shall be disregarded; and the resulting classifications shall be diminished by 1000 points;

(2) in determining the number of continuous quarters of such writer's membership in ASCAP for purposes of the Membership Continuity Fund, such writer shall be credited with no quarters of membership for any fiscal survey year covered by his election in which such writer receives not more performance credits than "the current performance election maximum".

(C) (1) A writer who was below Class 1000 in the Average Performance Fund when he elected and thereafter has more than 49,999 performance credits in any fiscal survey

year, or a writer who was below Class 1000 in the Recognized Works Performance Fund when he elected and thereafter has more than 49,999 recognized works performance credits in any fiscal survey year, may (provided he gives notice to that effect within 3 months after he has been notified of the results of said fiscal survey year):

(i) cancel such election and receive distribution starting retroactively for such fiscal survey year pursuant to Sections I through IV hereof, subject to the credit or debit that may be required by recomputation of such writer's distributable revenues, or

(ii) cancel prospectively only, and thereafter receive distribution under Sections I through IV hereof, starting with the next succeeding fiscal survey year.

(2) For purposes of classification under Sections II, III and IV hereof, any writer so cancelling such election shall have his performance credits, if any, for the years next prior to those covered by such election, credited as if they were received in the years next preceding such fiscal survey year.

(3) If any writer so cancelling such election has never received distribution under Sections I through IV hereof, the provisions of Section V shall be applicable and, for the fiscal distribution year based on the fiscal survey year referred to in (i) or (ii) above, the provisions of subsection (C) of Section II shall be disregarded.

(4) For purposes of participation in the Membership Continuity Fund, the number of continuous quarters of such writer's membership shall be determined in accordance with paragraph (2) of subsection (B) above.

(D) A writer previously in Class 1000 or above in both the Average Performance Fund and the Recognized Works

Performance Fund, who falls into a class below 1000 in either fund in any fiscal survey year, may elect to receive distribution calculated in accordance with subsections (A) and (B) above (provided he gives notice to that effect within 3 months after he has been notified of the results of the fiscal survey year in which he first fell below Class 1000 in either fund), either

(1) Retroactively, starting with the fiscal survey year in which he first fell below Class 1000 in either fund, subject to the credit or debit that may be required by recomputation of such writer's distributable revenues, or

(2) Prospectively, starting with the next succeeding fiscal survey year.

(E) An election under subsection (A) above must be made in writing and shall apply to distributions based on the fiscal survey years commencing no less than 30 days after said election (except that an election by a new writer member within 30 days after being notified of the acceptance of his membership application shall apply from the date he became a member) and thereafter until cancelled by notice in writing, such notice of cancellation (except where cancellation is made under subsection (C) above) to be given not less than two years after the notice of his first such election and to be effective for distributions based on the fiscal survey years commencing at least 30 days thereafter. A writer electing and then cancelling, under either subsection (C) above or this subsection (E), and thereafter electing again within the next five years, may not cancel such election during the succeeding five years. The provisions of paragraph (2) of subsection (B) and paragraph (2) of subsection (C) shall be applicable to any writer cancelling an election pursuant to this subsection (E).

(F) Distributions under this Section VII shall be made to writers who are not members of the Society with respect

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to their compositions which are published by ASCAP members, provided that performing rights in such compositions have not been granted to any other performing rights licensing organization for performance in the United States, or if [illegible]ted shall have been released by such organization.

VIII. *Resigning Members*

(A) If, in the case of a resigning writer member, the Society shall continue to have the right to license the performing rights in the United States to a work or works of such writer as a result of continued membership in the Society of one or more of the members in interest with respect to such work or works, and if no other performing rights licensing organization has any such right, distributions shall continue to be made to such resigning member subsequent to his resignation from the Society—for so long as the Society retains such licensing right, and no other performing rights licensing organization has any such right—on the basis of performance credits recorded for such work or works. The Society may require such resigning member to acknowledge that the Society retains such right and that no other performing rights licensing organization has any such right. In the event such resigning member fails so to acknowledge, such resigning member shall not be entitled to any payment pursuant to these provisions.

If a writer or publisher member who has received an advance resigns from membership before the advance has been recouped or repaid, and if the licenses existing at the time of his resignation have less than two years to run, then the works of such resigned member shall remain in the Society's repertory at least until the existing licenses expire, but in no event for less than a period of two years following his resignation, or until the advance has been recouped or repaid, whichever is earlier.

Anything to the contrary notwithstanding the Society may, at its option, deny resigning writer members the right to receive payment on any basis other than a current performance basis as defined in Section VII above, provided that such option shall be exercised as to all resigning writer members alike.

(B) With respect to all other works of the resigning writer member, distributions shall continue to be made to such resigning member subsequent to his resignation from the Society on the following basis:

(1) An amount shall be calculated as to each of the four distribution funds (or pursuant to Section VII) based on performance credits recorded for such works, such amount to be calculated in all respects in accordance with the provisions hereinbefore set forth.

(2) Such amount as to each fund (or calculated pursuant to Section VII) shall be separated into two portions, the first of which shall bear the same ratio to the entire amount as the revenues received by the Society from unexpired radio and television licenses made prior to the time of such member's resignation bears to the aggregate of all revenues received by the Society during the preceding fiscal year, and the second of which shall bear the same ratio to the entire amount as the sum of revenues received by the Society from sources other than radio and television bears to the aggregate of all revenues received by the Society during the preceding fiscal year;

(3) The first portion shall, as to each fund (or calculated pursuant to Section VII), be distributed to such resigning member on the basis of performances made under radio and television licenses made prior to the resignation of such member;

(4) The second portion shall, as to each fund (or calculated pursuant to Section VII), be distributed for

four quarterly distributions after the resignation of such member (and not thereafter), the first such distribution to be equal to the full amount of such portion, the second such distribution to be equal to 75% of such portion, the third such distribution to be equal to 50% of such portion, and the fourth such distribution to be equal to 25% of such portion.

Weighting Formula

In awarding credit for a performance appearing in the Society's survey, no distinction shall be made on the basis of the identity or use of the work performed, except as provided in this Weighting Formula.

(A) As used in this Weighting Formula:

(1) "*Theme*" shall mean a musical work used as the identifying signature of a radio or television personality or of all or part of a radio or television program or series of programs. A musical work (other than a jingle) used in conjunction with an advertising, promotional or public service announcement shall receive the same credit as a theme.

(2) "*Background Music*" shall mean mood, atmosphere or thematic music performed as background to some non-musical subject matter being presented on a radio or television program. A vocal or a visual instrumental rendition which is a principal focus of audience attention shall not be regarded as background music regardless of the context in which performed.

(3) "*Jingle*" shall mean an advertising, promotional or public service announcement containing musical material (with or without lyrics), where (a) the musical material was originally written for advertising, promotional or public service announcement purposes or (b) the performance is of a musical work, originally written for other purposes, with the lyrics changed for advertising, promotional or public service announcement purposes with the permission of the ASCAP member or members in interest.

(4) "*Cue Music*" shall mean music used on a radio or television program to introduce, but not to identify, a personality or event thereon. The term "cue music"

includes, but is not limited to, introductions, "play-ons", and "play-offs".

(5) *"Bridge Music"* shall mean music used on a radio or television program as a connective link between segments or portions thereof.

(6) (a) *"Feature Performance"* shall mean any performance which is a principal focus of audience attention and which constitutes a musical subject matter on a radio or television program and is not a performance as a theme, jingle, background, cue or bridge music. A visual instrumental or vocal performance shall be presumed to be a feature performance unless such performance is as a theme or a jingle or is not a principal focus of audience attention.

(b) *"Visual Instrumental Performance"* shall mean a performance by a musician or musicians who are seen by the television viewing audience.

(c) *"Vocal Performance"* shall mean the performance of the lyrics of a composition or the on-camera humming or whistling of the music of a composition.

(d) *"Musical Subject Matter"* shall mean the presentation in a program of an activity (i) which normally involves the performance of music—such as singing, playing a musical instrument, or dancing (including skating in a manner akin to dancing or ballet), and (ii) in which such music is the music written for or used in the original presentation as the work being sung, played, or danced to.

(7) *"Qualifying Work"* shall mean a work meeting both of the criteria set forth in subparagraphs (a) (i) and (a) (ii) of paragraph (C) of this Weighting Formula. A work meeting the criteria set forth in subparagraph (d) of said paragraph (C) shall also be deemed a qualifying work to the extent that it shall receive the percentage set forth in said subparagraph

(d) of the use credit provided in this Weighting Formula for qualifying works.

(8) *"Non-Qualifying Work"* shall mean a work not meeting the criteria set forth in paragraph (C) of this Weighting Formula.

(9) *"Single Program"* shall mean any substantially consecutive period of broadcasting which is presented by the same dominant personality, or is presented under substantially the same title, or is presented as a single show with separate segments. If any such period of broadcasting is more than two hours in duration, each two-hour segment thereof shall be treated as a single program, and any remaining fraction of less than two hours shall be treated as a single program.

(10) *"Use Credit"* shall mean a full credit for a single performance.

(11) *"Otherwise Applicable Credit"* shall mean the use credit or percentage of a use credit otherwise provided for in this Weighting Formula for a particular type of use of a qualifying or non-qualifying work.

(B) *Credit for Feature Performances*

(1) Each feature performance of a work (as distinguished from performance as a theme or jingle or as background, cue or bridge music) shall receive one use credit for the first performance and 10% of a use credit for each subsequent performance on a single program, provided that no work shall receive more than two use credits for a single program.

(2) In determining use credits for radio or television programs containing more than eight works per each quarter hour of programming (excluding themes, jingles, background, cue and bridge music), the use credit allotted to each work shall be reduced pro rata so that all works on the entire program shall receive in the

aggregate the number of use credits which would have been allotted if the program had contained eight compositions per each quarter hour of programming (excluding themes, jingles, background, cue and bridge music).

(3) If (i) analysis indicates that there are inaccuracies in listing the compositions performed or describing the manner of the performance on reports received for certain programs, and (ii) such information is prepared by a member or by a person associated with a member, and (iii) the Society does not have and the user or the member are unable to furnish the Society with a film, video tape, or other audio-visual recording of the program,—then it shall be presumed that the works of the member did not receive feature performances on the program.

(C) *Credit for Performances as a Theme, Background Music, or Cue or Bridge Music*

(1) *Qualifying Works:*

(a) A work complying with both of the following tests shall receive 50% of a use credit or other percentage thereof specified in this Weighting Formula for the performance of a qualifying work as a theme, background music, or cue or bridge music:

(i) an accumulation of 20,000 feature performance credits since January 1, 1943;

(ii) an accumulation of 2500 feature performance credits during the five latest available preceding fiscal survey years, toward which total not more than 750 credits shall be counted for any one of such survey years.

(b) Any work first performed before January 1, 1943 shall satisfy the requirements of subparagraph (a) (i) above, in the event such work has not accumu-

lated 20,000 feature performance credits since such date, if the title of such work appears in the publication *Variety Music Cavalcade,* Prentice-Hall 1952, or among the top ten on the "Lucky Strike Hit Parade" or the top ten on the weekly list of the most popular songs published in *Variety* or *Billboard.*

(c) If any work first performed on or after January 1, 1943 has earned the number of performance credits required pursuant to subparagraph (a) (i) above in the two consecutive fiscal survey years commencing with the year in which its first performance is recorded in the survey, or if the title of such work appears in the publication *Variety Music Cavalcade,* Prentice-Hall 1952, or among the top ten on the "Lucky Strike Hit Parade" or the top ten on the weekly list of the most popular songs published in *Variety* or *Billboard,* there shall be a rebuttable presumption that such performance credits recorded before October 1, 1955 reflect feature performances; otherwise, the burden shall be on the member or members in interest to establish that performance credits recorded before October 1, 1955 reflect feature performances.

(d) A work performed as a theme and which complies with the requirements of subparagraph (a) (ii) above shall receive 37.5% or 25% of a full use credit if it has accumulated 15,000 or 10,000 feature performance credits, respectively, since January 1, 1943.

(e) Until five years of records of feature performances are available the number of feature performance credits required pursuant to subparagraph (a) (ii) above shall be reduced proportionately to the number of years available. For a work whose first surveyed performance occurred within the five latest available preceding fiscal survey years, the requirement of said subparagraph (a) (ii) shall be satisfied when the work has met the requirements of subparagraph (a) (i)

above and shall continue to be satisfied if in each subsequent year of such five years the work receives one-fifth the number of feature performance credits required by said subparagraph (a) (ii).

(f) The number of performance credits needed to meet any requirement pursuant to subparagraph (a) above is premised on an annual total of approximately 25,000,000 performance credits recorded in the ASCAP survey; performance credits in years when the total number of performance credits recorded in the ASCAP survey was 20% greater or smaller than that number shall be adjusted proportionately.

(g) For works which in their original form were composed for a choral, symphonic or similar concert performance (including chamber music), the numbers of feature performance credits required by subparagraphs (C) (1) (a), (b) and (d) shall be reduced to 20% of the numbers of feature performance credits prescribed therein.

(2) *Themes:*

(a) When any qualifying work is performed as a theme, it shall receive only 50% of a use credit for all such performances within the first 60 minutes of any given two-hour period regardless of the number of actual such performances, and for all additional such performances during the second hour it shall receive only an additional 5% of a use credit regardless of the number of actual such performances.

(b) When any non-qualifying work is performed as a theme, it shall receive only 10% of a use credit for all such performances within the first 60 minutes of any given two-hour period regardless of the number of actual such performances, and for all additional such performances during the second hour it shall receive only an additional 1% of a use credit regardless of the number of actual such performances.

(c) When during any given two-hour period, any work is performed both

(i) as a feature performance and

(ii) as a theme or background, cue or bridge music

it shall receive for its performances as a theme, background, cue or bridge music the percentage of a use credit herein provided therefor, except that in no event shall the addition of such percentage of use credit increase the aggregate use credit for such work to more than 1-1/10 use credits for the first 60 minutes of such two-hour period, or to more than 10% of a use credit for the second hour.

(d) When any work is performed as a theme at the opening or closing of all or part of a television musical or variety program and the performance is rendered on-camera either vocally, instrumentally or by dancer(s) and constitutes a principal focus of audience attention, it shall receive an additional 25% of a use credit for the program (computed after the application of subparagraph (3) (c) of this paragraph (C)) provided, however, that the additional credit awarded hereunder for all works so performed on a particular program shall not aggregate more than 50% of a use credit, to be apportioned equally among all works so performed on the program.

(3) *Background, Cue and Bridge Music:*

(a) When any qualifying work is performed as background, cue or bridge music, it shall receive 50% of a use credit for the first such performance on a single program, and shall receive only 5% of a use credit for each subsequent such performance on such program, provided that no work shall receive more than one use credit for a single program.

(b) Non-qualifying works performed as background, cue or bridge music on each program shall receive,

for each three minutes duration in the aggregate for that program, 27.5% of a use credit; fractions of three minutes shall be computed on the basis of 5.5% for each 36 seconds or major fraction thereof, and where the aggregated amount for any works written by the same writer or writers and published by the same publisher is in total a minor fraction of 36 seconds, 1% of a use credit. To determine use credits for performances in this classification where the time of actual performance cannot be established from the information available to the Society, 40% of the net program time will be considered as containing background, cue or bridge music and the computation of 27.5% will be based on such computed time. Where condensed versions of a program are presented and the actual music performed on this condensed version is unknown, the 40% computation will be made on the net program time and applied pro rata to all of the background, cue or bridge music in the original program. Where it is determined that the amount of music on particular types of programs deviates more than 20% from the 40% computation (*e.g.*, so that less than 32% of the net program time contains background, cue and bridge music) the percentage applicable to these types of programs will be determined through periodic samples of the amount of program time on these types of programs containing background, cue and bridge music. Where the time is not given on the program or on a cue sheet available to the Society, in determining the use credit for each work the background, cue and bridge time determined as above will be divided among uses on a pro rata basis. Anything to the contrary notwithstanding, any non-qualifying work which has been commercially published for general public distribution and sale, or of which a commercial recording has been made as a "single" for general public distribution and sale,

and five feature playings of which have been recorded in the Society's local radio sample survey during the five preceding fiscal survey years, shall receive not less than 20% of a use credit for the first performance as background, cue or bridge music on a single program and 2% of a use credit for each subsequent such performance on such program, provided that no work shall receive credit for background, cue or bridge use under this provision of more than 40% of a use credit for a single program.

(c) If the aggregate use credit allotted to works performed as themes and to qualifying works used as background, cue or bridge music and works described in the last sentence of subparagraph (3) (b) above performed as background, cue or bridge music per each quarter hour of programming would exceed 50% of a use credit, the use credit allotted to each such work shall be reduced pro rata so that all such works performed as theme, background, cue or bridge music on the entire program shall receive an aggregate of 50% of a use credit per each quarter hour of programming.

(4) *Jingles:* When any work is performed as a jingle it shall receive only 1% of a use credit for all such performances within the first 60 minutes of any given two-hour period regardless of the number of actual such performances, and for all additional such performances during the second hour it shall receive only an additional 10% of 1% of a use credit regardless of the number of actual such performances.

(5) *General Limitation:* Anything to the contrary notwithstanding:

(a) On any network program which is presented four or more times weekly, having the same dominant personality or under substantially the same title or format, the credit to be awarded for feature performances of works written or published

by persons regularly associated with the program on which such performances are rendered and for performances of works as themes, background, cue or bridge music shall be 25% of the otherwise applicable credit. This limitation shall apply in the case of both individual credits and maximum aggregate credits on any such program.

(b) Any work (other than a jingle) used in conjunction with an advertising or promotional announcement sponsored by the network or station on which it appears shall receive 10% of the otherwise applicable credit.

(D) *Serious Works Four Minutes or Longer in Duration*

Works which require four minutes or more for a single, complete rendition thereof, and which in their original form were composed for a choral, symphonic, or similar concert performance (including chamber music), shall receive credit on the following basis when performed for the respective designated periods of time:

Minutes of Actual Performance	The Otherwise Applicable Credit Is Multiplied by:
4:00 to 5:30	2
5:31 to 10:30	6
10:31 to 15:30	12
15:31 to 20:30	20
20:31 to 25:30	30
25:31 to 30:30	40
30:31 to 35:30	50
35:31 to 40:30	60
40:31 to 45:30	70
45:31 to 50:30	80
50:31 to 55:30	90
55:31 to 60:30	100
Each additional 5 minutes or part thereof	10

Performances on national radio network sustaining programs consisting of concerts by symphony orchestras which are presented as a genuine contribution to the culture of the nation shall be awarded credit equal to performances on a radio network of 50 stations.

(E) *Concert and Symphony Performances*

The license fees which the Society receives from concert and symphony halls shall be multiplied by five in determining the credit to be awarded for performances of works in concert and symphony halls. For performances in concert and symphony halls, points shall be awarded as follows:

	POINT AWARD						
	MINUTES						
	Up to 5	6 to 10	11 to 15	16 to 20	21 to 30	31 to 45	46 to 60
A) ENTERTAINMENT MUSIC—i.e. Light or Standard Instrumental and Choral Music ALL CATEGORIES	1	2	3	4	5	6	7
B) SERIOUS MUSIC IN THE ORIGINAL FORM							
a. Works for 1 or 2 instruments with or without voice	2	4	6	8	10	12	14
b. Works for 3 to 9 instruments with or without voice	3	6	9	12	15	20	25
c. Works for small orchestra with or without voice	4	9	18	24	30	40	50
d. Works for full orchestra with or without voice	8	18	36	48	60	80	100

For works in excess of 60 minutes, pro rata on the basis of the 60 minute points. The percentage of credit for arrangements of works in the public domain will be determined in accordance with Section (F).

(F) *Copyrighted Arrangements*

(1) Except as hereinafter specifically provided, any arrangement of a work otherwise in the public domain which

(a) is separately published and separately copyrighted in the United States; or

(b) is a work described in paragraph (6) below and is available on rental; or

(c) is included in a copyrighted collection of hymns or religious anthems which is offered for sale in a regular trade edition

shall receive 10% of the otherwise applicable credit.

(2) If an arrangement of a work otherwise in the public domain is included in a copyrighted collection and does not qualify for the 10% credit under the preceding paragraph it shall receive 2% of the otherwise applicable credit.

(3) If a copyrighted arrangement has the same title as the underlying original composition, but contains new lyrics it may receive up to 35% of the otherwise applicable credit depending upon the extent of new material.

(4) If a copyrighted arrangement has an entirely new title and contains new lyrics, it may receive up to 50% of the otherwise applicable credit depending upon the extent of new material.

(5) If a copyrighted arrangement has changes in the music, it may receive an additional 10% to 50% of the otherwise applicable credit depending upon the extent of new material.

(6) If a copyrighted arrangement is primarily an instrumental work, it may receive from 10% to 100% of the otherwise applicable credit, depending upon the extent to which it embodies changes in the music as follows:

(a) a transference from one medium to another, up to 35%;

(b) a development of a work which exhibits creative treatment and contains original musical characteristics and is identifiable as a set piece apart from the source material, 35% to 100%.

(7) All classifications pursuant to paragraphs 3, 4, 5 and 6 shall be made by the Special Classification Committee for Public Domain Arrangements.

(G) *Religious Works Four Minutes or Longer in Original Duration*

Religious works which in their original form require four minutes or more for a single complete rendition thereof, shall receive three (3) times the otherwise applicable credit when performed in any form on a religious program sponsored or produced by a religious organization, or on a religious program of an exclusively devotional nature such as a program of hymns or other religious works. A work shall be deemed to be a religious work if it is a work of a devotional nature composed in a religious idiom for use in a church or other religious service or program, or for other similar use. A work qualifying for credit under paragraph (D) and paragraph (G) shall be entitled to receive credit under whichever paragraph provides the higher credit for such performance. In no event shall it receive credit under both paragraphs (D) and (G) for the same performance.

(H) *Concert and Symphony Performances—Additional Credit*

In the case of any work which qualifies for credit under subdivision (B) of paragraph (E) above, and for which the Society holds the right to license such work from a writer member of the Society, or holds the right to license

such work from the writer under Section I of the Order, such work shall receive for performances under paragraph (E) above, additional credit under this section. The additional credit shall be determined by multiplying the credit such work received under paragraph (E) above by twice the ratio of (i) the license fees which the Society received from concert and symphony halls in the survey year October 1, 1963 through September 30, 1964 to (ii) the license fees which the Society received from concert and symphony halls in the year of the performance. Such additional credit shall in no event be more than twice the credit awarded under paragraph (E) above. Distribution based on the additional credits awarded under this paragraph shall be in addition to the distribution based upon credits awarded under paragraphs (E) above.

Procedure and Specific Situations in Application of Weighting Formula Provisions

The Board of Directors has considered in detail the procedure for implementing the Weighting Formula provisions and the way in which they will be applied to specific situations.

1. *Weighting Formula Provisions—Procedure*

The Society has for some time been reviewing on a regular basis information received concerning performances on network and local television programs. This review is being conducted by means of audio and visual examination of programs. The Society expects to obtain video-tape recording equipment to be used in connection with this review.

Particular attention will be given to programs which, considering the nature of the program, generate an unusually large number of performance credits. Such programs will be checked by listening and viewing, or both,

and comparing the results with the music information appearing on the program logs or cue sheets received by the Society.

2. *Weighting Formula Provisions—Specific Situations as Guides in Application of Formula*

The Survey and Distribution Committee has prepared, and the Board of Directors has approved, a series of illustrations of the way in which the formula provisions would be applied to specific situations.

The following are examples of performances other than as a theme, or a jingle, which *would* be credited as feature performances under the Weighting Formula:

1. A vocal or visual instrumental performance of a composition which is announced or to which the attention of the audience is otherwise specifically directed by a participant on the program.

2. A performance as part of a song or dance act which constitutes the principal activity on the program at the time it is rendered.

3. A performance on an audience participation program where the activity taking place is the identification by the participants on the program of the composition being performed.

4. Announced instrumentals at public spectacles such as football games.*

*NOTE: A visual instrumental performance at a football game by a band which was actually viewed and heard by the television audience will be credited as a feature performance so long as the camera was focused on the band deliberately—that is, unless the band was visible for only a fleeting moment while, for example, the camera was focused on someone who just happened to be passing by the band or while the camera was panning.

The following are examples of performances which would *not* be credited as feature performances under the Weighting Formula:

1. A performance where the orchestra or instrumentalist appears visually for a brief period while a participant on a program, such as a quiz game, panel, audience participation or similar program, is passing by or while the camera is panning.

2. A vocal or visual instrumental performance to introduce or accompany the following on quiz games, panel, audience participation or similar programs:

(a) the description or presentation of prizes;

(b) the appearance or departure of participants; or

(c) the change of scene or subject.

3. Unannounced instrumental performances during public spectacles such as football games. (Performances at football games other than those indicated to have occurred during half-time periods will be presumed to be background music.)*

4. A vocal or visual instrumental performance used as a bridge to or from a commercial announcement or in a similar manner as a connective link.

5. A vocal or visual instrumental performance used as a play-on or play-off.

6. Non-visual instrumental performance as accompaniment to magicians or clowns, or acrobatic or animal acts.

7. Humming or whistling off camera in a television program shall not be regarded as a feature performance.

* See note page 15.

8. A performance with a film clip, newsreel, or documentary of dancers, skaters, instrumentalists or singers is not credited as a feature performance unless the music heard by the viewer is the music written for or used in the original presentation as the music being danced to, skated to, played, or sung by the performers being shown on the television screen.

9. So-called "Mickey mousing" shall not receive feature credit. The term "Mickey mousing" refers to scoring on a film or similar program in which the music is very closely synchronized with movements, animation, or other activity on the program. The term does not include an activity which constitutes a musical subject matter.

The following is an example of a theme performance which would receive additional credit under Paragraph (C)(2) (d) of the Weighting Formula:

A performance at the opening or closing of a program or before or after a station break which serves as an identifying signature of all or part of the program is credited as a theme performance. However, where the performance is on a television musical or variety program, and is rendered on-camera, either vocally, instrumentally or by dancer(s) and constitutes a principal focus of audience attention, the performance will receive the additional credit for theme performances provided in Paragraph (C)(2) (d) of the Weighting Formula.

The foregoing illustrations are designed to serve as guides to the application of the Weighting Formula provisions. They are not, it must be emphasized, an all-inclusive listing of all possible situations, and they will be supplemented from time to time as additional illustrations are felt to be appropriate.

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CBS v. ASCAP

CX 2, Exhibit No. 12

Pamphlet, whose cover is a letter, dated 6/28/63, from Stanley Adams "To All Members of the Society", describing the pamphlet's contents as "The ASCAP Survey" by Dr. Joel Dean, which Judge McGeehan suggested be distributed to all ASCAP members.

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MUrray Hill 8-8800 Cable Address: ASCAP, New York

AMERICAN SOCIETY OF COMPOSERS,
AUTHORS AND PUBLISHERS

575 Madison Avenue
New York 22, New York

STANLEY ADAMS
President

June 28, 1963

To All Members of the Society:

At Judge McGeehan's suggestion, Dr. Joel Dean, who designed the Society's survey, addressed the Society's West Coast and New York General Membership Meetings and explained the survey with the aid of slides. Following the slide presentation, Judge McGeehan recommended that Dr. Dean prepare the material presented at the membership meetings in pamphlet form for distribution to the entire membership.

For ready reference, you will find the three branches of the pamphlet at the following pages:

1. Typical Questions Asked by the Members About the ASCAP Survey (pages 1 to 5);
2. Explanatory Slides (pages 6 to 37); and
3. Glossary of Terms (pages 38 to 41).

All members should take the time to read this pamphlet carefully. I am certain that it will provide the answers to many of the questions which members have about the survey. We are indebted to Judge McGeehan for suggesting that this pamphlet be prepared by the Joel Dean Associates and distributed to the entire membership so that all members may be better informed about this vital area.

Cordially yours,

STANLEY ADAMS,
President

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June 27, 1963

Mr. Stanley Adams, President
American Society of Composers,
Authors and Publishers
575 Madison Avenue
New York 22, New York

Dear Mr. Adams:

I am pleased to enclose a pamphlet entitled "The ASCAP Survey—Its Design and Objectives" which has been prepared by the Joel Dean Associates at my request. This pamphlet incorporates the explanation of the Society's survey presented by Dr. Joel Dean at the Society's West Coast and New York General Membership Meetings.

The pamphlet consists of slide material and explanatory text explaining the survey in detail. In addition, the pamphlet includes ten typical questions which members ask about the survey, together with answers to these questions prepared by the Joel Dean Associates. These questions and answers are intended to supplement the material included in the slide presentation. A glossary of terms has been included following the explanatory slides, setting forth the meanings of many of the terms which sampling experts commonly use but which may be unfamiliar to a large portion of the ASCAP membership.

I think that this pamphlet will be most helpful in assisting the members in understanding the design and objectives of the ASCAP survey, and I strongly recommend that all members of the Society read it carefully.

Sincerely yours,

JOHN E. McGEEHAN

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THE ASCAP SURVEY

ITS DESIGN AND OBJECTIVES

BY

DR. JOEL DEAN

Professor of Business Economics, Graduate Faculties of Political Science, and Graduate School of Business, Columbia University.
President, Joel Dean Associates.

TYPICAL QUESTIONS ASKED BY THE MEMBERS ABOUT THE ASCAP SURVEY

1. *Why don't I receive performance credits whenever I can show that my work has been played on a particular station?*

No credit can be given unless the performance is included in the sample drawn. Sampling, rather than a complete count, is necessary because there are over a billion licensed performances annually and it would be economically impossible to take and process a census of all these performances. In a sample, each performance of your song picked up represents the other times that song is performed but not included in the sample. If, for example, 1 out of 100 performances were included in the sample, each performance picked up in the sample would represent 100 performances and would be given the weight of 100 by the application of a statistical multiplier. To award credits for performances not picked up in the sample, and at the same time to make the performances sampled represent those not sampled, would be double counting.

2. *What efforts are made by the Society to identify works picked up in the survey?*

In those parts of the survey where logs or cue sheets are used, identification problems are rare. For those parts of the survey where tapes are used, extensive efforts are made to identify performances.

In most programs covered by tapes, disc jockeys announce the titles of the works performed. Where the titles are not announced, the Society's listeners are usually able to identify the works performed from their own knowledge on the first listening. For titles not identified readily, the most experienced members of the staff listen jointly to the work. They are able to identify most of the remaining works at this listening. A lead card recording the melody is prepared if, after listening, the work has not been identified.

On the lead card the station, the date and the time of performance are set forth so that when the composition is subsequently identified, credit is awarded to all previous uses.

In addition, letters are often sent to stations requesting information as to music uses. Further efforts to identify performances would not reduce non-identification by much. Moreover, additional efforts would be costly to every member of the Society and are not economically justifiable.

3. *Why doesn't ASCAP get music logs from the stations included in the survey?*

Unlike some countries, the United States Government does not require users of music to maintain records of their performances. A great many stations do not prepare music logs on a regular daily basis and many have said that they will not prepare logs on such a basis. Some have said that they would stop using ASCAP music if they had to maintain daily music logs. Even if complete logs were kept by stations, they would not be useable unless they were accurate. Judge McGeehan is investigating the possibility of obtaining logs from local stations for possible use in the survey.

4. *Is there any way for a member to find out what stations are being included in the sample?*

No. Since the purpose of the sample is to give a truly representative estimate of actual performances, there must be secrecy and surprise in drawing and taking a sample. If it were known in advance what programs were to be included in the sample, payola could develop. Independent survey experts draw up and administer the sample and neither the members nor the licensees know what stations and programs will be included in the sample. The sample is drawn on a scientific basis and hence the independent survey experts have no discretion in determining what is to be included. Thus, the interests of all members are protected by the use of a scientific probability sample.

5. What is the meaning of "surprise" and why is it a necessary element of sampling?

By surprise, we mean simply the absence of any advance notice that a particular station or program is to be sampled. If a station were given advance notice that a particular time period is to be included in the sample, the crucial element of surprise would be eliminated and the results of the sample would not be truly representative of all performances. To give a station advance notice of a program to be sampled would invite payola and distort the sample.

6. Wouldn't a census of all licensed performances help the writer with only a few playings?

No Taking a census of all performances would cost far more than what the Society collects. There would be no money left to distribute to the writer with few playings or to any writers or publishers.

7. What is the size of the local radio sample, the local TV sample, and the wired music and similar services sample?

For the local radio sample, 60,000 hours of programming per year are collected. A small part of this (less than 10%) is discarded because it is network programming covered by logs submitted by the networks. The net number of hours from local radio is about 55,000 hours per year.

For the local TV sample, 30,000 hours of local programming per year are collected and processed.

For the wired music and similar services sample, about 4,000 hours of programming per year are collected and processed.

8. If a complete census is too expensive, why not enlarge the sample substantially?

It is a statistical fact that with the present sample size, an increase in sample size would not yield a proportionate increase in precision. It would increase the cost of the survey and reduce the money remaining for distribution to the

members. The present survey costs substantially more than was expended prior to its inception in October, 1959.

9. *Suppose only 20 performances out of a total of 10,000 known performances of a particular work are picked up in the survey. How can there be an equitable distribution to the member involved?*

The disparity between 20 performances picked up and 10,000 played is, of course, not a valid measure of the precision of the sample. A sample is bound to be smaller than the universe it represents. By the application of appropriate statistical and economic multipliers, the 20 performances picked up are recognized as representing a much larger number of performances.

The ASCAP sample is designed to give maximum precision per dollar spent on sampling. For the amount spent, and within the limits of our present knowledge of the characteristics of the universe of all ASCAP performances, the 20 reported performances will result in the most equitable distribution possible to the member involved. The only way to get more precision is to spend more money and it might be noted that increases in precision are only attainable with a more than proportionate increase in sampling size and cost. Thus, to double precision would require about a four-fold increase in sampling size and cost.

In spite of our best efforts to have objective scientific sampling of maximum efficiency, the 20 performances may not meticulously measure the 10,000 performances. Sampling imprecision is unavoidable in our sample or in any sample, but it is just as likely to result in an over-estimate of the total performances as an under-estimate. Moreover, imprecision in the estimates of the ASCAP sample tend to cancel out as between different compositions in the catalog of individual members.

Thus, we see that the test of a good sample is not what proportion of playings it picks up. The United States Government with its vast resources makes crucial economic policy decisions on the basis of a Federal Reserve Board

survey of consumer buying intentions, using a sample only one-seventh as big proportionately as in this illustration. It is the absolute size of the sample and not its proportion to the universe that determines its precision. In the ASCAP survey sampling depth is related to the fees licensees pay to the Society. Thus, the sample is largest and precision is greatest when it counts the most for the equitable distribution of income to members.

The test of a good sample is rather whether a more precise estimate could be obtained at the same cost. Because the precision of a sample depends on its absolute size rather than on the proportion sampled, the basic question is what determines the absolute size of the sample in the ASCAP survey. This is determined by how much revenue ASCAP takes in and how much of this the Society can reasonably afford to spend to determine how much should go to each member. The more ASCAP spends on the survey, the less money is left to distribute.

10. *If the sample were greatly enlarged so that the composer of the music in the previous example had many more performances picked up, wouldn't his distribution be greatly increased?*

Increasing the sample size would increase the number of performances of this composer picked up in the survey; it would also increase in about the same proportion the total performances of all other composers picked up. Thus, even assuming the same moneys available for distribution to the membership, there would be a decline in the value of a performance roughly proportionate to the increase in the sample size. For example, quadruple the sample size and the credit value of a performance picked up would be about quartered.

Moreover, an increase in sample size involves an increase in costs. While quadrupling the sample size would increase the number of performances picked up, it would cut the credit value of any given performance to much less than one fourth of its present value.

EXPLANATORY SLIDES

SLIDE 1

DIMENSIONS OF THE SURVEY JOB

1. Playings of ASCAP compositions each year—over a billion.
2. Licensees of ASCAP—over 34,000.
3. Membership of ASCAP—over 8,000.
4. Job of survey: from this vast, diverse universe of playings, to estimate performances attributable to the works of individual members.

Slide 1 shows that the job of the ASCAP survey is complex because of the huge ASCAP repertoire, the vast and diverse universe of playings, the large number of licensees and the substantial ASCAP membership.

With over a billion playings each year, the average gross revenue to ASCAP per playing is tiny—less than 3¢. This revenue per playing varies widely. On a small radio station it could be 1/10 of a cent per playing or less; on a large TV station as high as several dollars; and considerably more on a TV network program carried by many affiliates.

Because the licensees are numerous (over 34,000), vary widely in the revenue each contributes to ASCAP, and are scattered geographically, the job of finding out which ASCAP compositions have been performed is complex, time-consuming and expensive. Even after a playing has been identified it must be processed in order to estimate how much of the total value of the ASCAP repertoire and how much of the total income flowing annually into ASCAP are attributable to the playings of the compositions of each of the Society's more than 8,000 members.

SLIDE 2

FOUR STEPS IN DISTRIBUTION OF ASCAP's INCOME

1. Sampling of playings.
2. Identification of playings.
3. Determination of economic importance of playings.
4. Determination of credits by application of weighting rules.*

*Weighting rules are not covered in this presentation of survey.

In accomplishing the job of distributing ASCAP's income to individual members on the basis of the continuing survey of performances, as Slide 2 indicates, four basic steps are essential:

First, we must take a sample. It would be out of the question to identify and process a billion playings. Second, we must identify the sampled playings, the authors and publishers and the licensee users. Third, we must find out the economic worth of playings in terms of the Society's revenues from the segment in which the playings occur. Fourth, it is necessary to determine by application of the Society's weighting rules how many credits should be assigned a particular composition or type of use. Determination and application of the weighting rules that govern the credits assigned is not a part of the survey proper and hence is not discussed here.

If ASCAP income is to be distributed equitably to its members, each of these four essential operations must be carried out conscientiously and efficiently.

SLIDE 3

PURPOSE OF SURVEY

Purpose of survey is to distribute income of ASCAP to members

1. scientifically.
2. equitably.
3. economically.

To achieve purpose we must reliably estimate

1. what was actually played.
2. what was economic value of performance.

As indicated by Slide 3, the purpose of the survey is to distribute the income of the Society to members scientifically, equitably and economically.

By *scientifically*, we mean through the use of objective measurements made by the most modern statistical and economic techniques.

By *equitably*, we mean that the distribution to each member ought to reflect his contribution to ASCAP.

By *economically*, we mean frankly facing the fact that the money for the survey comes out of the members' pockets. The distribution of the Society's income costs the members money. These costs have to be taken into account in deciding how much precision its member-owners can afford to purchase.

The validity of the survey as the basis for income distribution is not tested by whether or not every playing by every licensee is reported, identified and made the basis for payment to a member. Obviously, this would be physically impossible and economically unsound. The question is not whether playings have been missed. Of course, some have been. Instead, the important questions are (1) whether the precision of measurement of playings can be stepped up without spending any more money in the aggregate and (2) whether spending more of the members' money to increase the sample and improve the survey would produce

enough more precision in the distribution of the Society's income to be worth the greater cost.

It is a statistical fact that increasing sampling size, and hence survey cost, does not yield proportionate increases in precision. Thus a large increase in sample size would result in a smaller increase in sampling precision. We try to spread the survey budget among different parts of the survey so as to equalize the "income-distribution justice" per dollar and thus make the survey produce as much precision as possible within appropriate budgetary limits.

Two types of estimates are required:

1. *Performances:* What compositions of members were actually played by licensees?
2. *Valuations:* What is the value of these playings?

SLIDE 4

PROBLEM OF ESTIMATING WHAT WAS PLAYED

Three basic questions:

1. What pickup mechanics—logs or tapes?
2. What pickup proportions—sample or census?
3. What pickup source—at the network input or at the local station broadcast output?

Slide 4 focuses attention on the first problem, estimating what was played. There are three basic questions. They concern (1) pickup mechanics, (2) pickup proportions and (3) pickup sources.

As to *pickup mechanics*, the question is whether logs (*i.e.*, written records of what was performed) supplied by the user or tape recordings should be the mechanism for picking up the performance. Logs that are available and reliable are now used in the survey because it is cheaper to identify performances from a log than from a tape. In addition it will sometimes cost less to get logs than tapes.

The principal deterrents to the greater use of logs are

unavailability and unreliability. The Society is continually investigating the possibility of obtaining logs from additional licensees. We are hopeful of greater use of logs in the future. Many licensees, however, do not prepare logs on a continuing basis. Many broadcasters assert that it would be expensive to do so and that they would discontinue use of ASCAP music if the Society required them to furnish such logs. To require that licensees prepare logs for only those periods when ASCAP compositions used by these licensees were to be included in the survey would require pre-notification. Pre-notification would encourage payola or falsification of the logs. To make log samples gyp-proof is not easy or cheap. The essence of an audit is surprise. Giving a station advance notice of the log sample would invite payola. Drawing a sample from logs which are kept continuously presents no problem except that the logs must be kept accurately.

As to *pickup proportion*, the question is whether to sample (*i.e.*, pick up only a fraction of the total performances) or, instead, to take a census (*i.e.*, pick up *all* performances). This decision of census *vs.* sample is independent of the decision on pickup mechanics. For national radio network commercial programs, for sustaining segments of these programs, and for TV network programs we use logs and take a census of the logs. There are places in the survey where we sample logs. If logs became available for all ASCAP licensees, sampling of logs would still be necessary. The cost compared with the revenue could not possibly warrant a census of all performances. In making the choice between a census and a sample, and in deciding what proportion to sample, a prime consideration has been the amount of revenue ASCAP gets from the licensee compared with the cost of surveying.

As to *source of pickup*, in the case of network programs the choice lies between the input point (*e.g.*, surveying as the playing goes into the network) and the output point (*e.g.*, picking it up as it comes out of the broadcasting stations). This decision about pickup source is independent of the

other two. It would be possible to sample and tape national network performances at the output point. But, in general, when logs are available, we prefer to pick up at the input point if we know about flow-through (stations hooked in for that particular playing).

To summarize. As to pickup mechanics, we use logs up to limits imposed by availability and reliability, supplementing them with tapes. As to pickup proportions, we make extensive use of sampling because of the huge diverse universe and the tiny revenue per playing characteristic of most of the billion playings. For network programs we prefer to obtain the necessary information on what is performed at the input point (*i.e.*, the networks) when the necessary information is available. However, where such information is not available, we must obtain it at the output point (the local station).

SLIDE 5

HOW WE ESTIMATE WHAT WAS PLAYED

	Pickup		Estimate of Performances	
	Logs	Tapes	Sample	Census
Network T.V.	X			X
Local T.V.	X	X	X	
Network Radio	X	X	X	X
Local Radio		X	X	
Wired and Similar Music Services	X		X	

Slide 5 shows how the survey solves the three pickup problems.

In surveying playings on network T.V. the source of pickup is the network. Here the pickup mechanism is the log and the proportion picked up is 100%.

For local TV., the source of pickup is the individual

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station. A sample of local T.V. performances is taken and both logs and tapes are used in identifying performances.

For national network radio, the network is the source of pickup for playings on commercial broadcasts and on sustaining segments of commercial broadcasts. For playings on these broadcasts the pickup mechanism is the log and the proportion picked up is 100%. For all other network radio programs, playings are sampled. The station is the source of pickup and the pickup mechanism is tapes used in conjunction with logs where available.

For local radio, playings are sampled. The source of pickup is the station. The mechanism of pickup is the tape.

In surveying wired and similar music services, logs are used and these are sampled.

SLIDE 6

WHAT IS A SAMPLE

1. A miniature of a big totality (scale model of locomotive).
2. From this miniature (sample) measurements can be made of the totality (universe) when a total count (census) is too costly or inaccurate.
3. Test of well-designed sample is most reliability for the money.
4. Maximum reliability per dollar expended of members' money is the aim of the design of the ASCAP sample.

What is a sample? Most of the personal decisions you made today were based upon a sample. It was not a very scientific sample but it was a tiny sector of the totality of human experience. From your sample you had to judge what all of the rest was like. You sample everything. Random sampling is just a more scientific way of sampling. It is likely to give us more representative samples than those on which you and I base our business and personal decisions.

In grading wheat, you would not examine every grain in a carload individually; the cost would obviously be prohibitive. Therefore, a few hundred grains are taken from different parts of the car. The quality of the whole shipment is judged from them. This sampling method has worked to the complete satisfaction of both buyers and sellers over a long period of time.

A sample is a miniature of a much larger universe. Gallup polls are based on samples. Government estimates of employment and unemployment are based on samples.

There are reasons for this widespread use of sampling: (1) a total count, called a census, costs too much; (2) a total count is often less reliable than a sample because of the increased clerical job and the consequent increased risks of error; and (3) a total count takes too long, (you don't want to wait that long to get income from playings of your compositions).

The test of a well-designed sample is that it achieve the greatest reliability for the cost. This has been the aim of our sample design.

SLIDE 7

COST CONSIDERATIONS MAKE IT NECESSARY TO SAMPLE

1. Several hundred million performances of ASCAP compositions per year on local radio alone.
2. A census of all performances would not necessarily be more accurate than a sample.
3. To collect and process data on all performances would consume all the revenue of the Society.

As slide 7 indicates, the compelling reason for using sampling in the ASCAP survey is cost. We also get a bonus from the fact that a census of all performances would not

necessarily be more accurate than a sample and would delay income distribution.

There are probably over a billion performances of ASCAP compositions each year—several hundred million just for local radio alone. If we took a census of all these performances we would not necessarily be more accurate. Why not? Because, with such a large number of compositions, we would face a tremendous clerical job. This job would almost inevitably involve clerical errors greater than those that arise in sampling, where you can afford to double check to keep mistakes to a minimum.

The Census Bureau of the United States Government does not spend much of its time or energy taking censuses. In fact, it would be more accurate to call it the Sampling Bureau. Much of the data for even the 10-year censuses is compiled by sampling. Sampling is a way of life for the Federal Government and a way of life for all of us because it is so often more costly and less accurate to take censuses.

SLIDE 8

CENSUS OF LOCAL RADIO
WOULD CONSUME ALL ASCAP RECEIPTS

	(Millions of Dollars)			
Local Radio Receipts	$10	$10	$10	$10
Cost of Census at Different Estimated Direct Costs per Playing				
At local radio cost: (64¢)	192			
At assumed "log-only" radio cost: (35¢)		105		
At "break-even" costs: (3.3¢)			10	
At "same net receipts" cost: (0.17¢)				0.5
	—$182	—$95	0	+$9.5

One way to put the problem in perspective and to see why a sample is necessary is to look at the figures for local radio shown in Slide 8.

Slide 8 shows that if we took a census instead of a sample of local radio playings, all of the Society's local radio receipts would be used up in the mechanical operation of determining how to distribute these receipts. The Society's receipts from local radio are about $10[illegible]00,000 a year, as shown on the first line. The estimated traceable direct costs of processing a playing on local radio are estimated at about 64¢, as shown in the second line. Therefore, if all local radio playings were to be processed, the total direct cost to the Society (over and above its regular overheads, including the IBM machine rentals) would be about $192,000,000. This means that if we did what some people have urged, namely, pick-up and process every single licensed performance on local radio, the members would actually lose money—about $182,000,000 a year on local radio alone.

The assumed "log-only" per playing cost of 35¢ does not take into consideration the administrative costs that would be incurred in maintaining the detailed records required to ensure that all logs have been received, or the additional costs that would be incurred in assuring that the logs would faithfully and completely report what was really played and in verifying their reliability. Even without these additional costs, direct costs per playing would be in the range of 35¢. The cost of processing all performances would be $105,000,000. The loss (cost in excess of radio collections) would be $95,000,000.

Just to break even and have out-of-pocket costs equal collections, the cost of processing would have to be reduced to 3.3¢ per playing.

If the same number of dollars were to be distributed from local radio with a census as are now distributed with a sample, the processing cost per playing would have to be reduced to less than two-tenths of a cent.

A census is not economically feasible for many segments of the survey even with modern data processing equipment. On the other hand, scientific sampling makes economically justifiable distribution of revenue possible at a reasonable cost.

SLIDE 9

REPRISE: BACKGROUND OF SURVEY DESIGN

A. Job of distribution of ASCAP income is large and complex.
   1. Thousands of licensees.
   2. Over a billion ASCAP playings.
   3. Thousands of members.

B. Three pervasive problems of survey mechanics.
   1. What source of pickup? (Network vs. station)
   2. What mechanism for pickup? (Logs vs. tapes)
   3. What proportion to pickup? (Census vs. sample)

C. Three questions of sample design.
   1. What is a sample?
   2. What do we sample?
   3. Why must we sample?

Slide 9 looks back over the road we have travelled. So far, we have talked about three matters. We have seen that the job of distributing ASCAP income is a large and complex one because we are dealing with 34,000 licensees, over a billion playings a year, and about 8,000 members.

Next, there were the three problems of survey mechanics. What source of pickup?—the input point (*e.g.*, network) *vs.* the output point (*e.g.*, broadcasting station). What mechanism for pickup?—logs *vs.* tapes. What proportion of the potential pickup should be examined—all of it (a census) *vs.* part of it (a sample)?

Finally, we considered three questions relating to sampling. First, what do we mean by sample? Second, what is it that we should try to sample? Third, why do we really have to sample? Why can't we, as some have suggested, pick up all licensed performances?

The purpose of the ASCAP sample—as is the purpose of every sample—is to obtain reliable information economically and quickly. As with every sample, we face the problem of determining how much to pay for additional precision.

Achieving additional precision costs members money and for any given percentage increase in sample size (and hence sample cost), there is a smaller percentage increase in reliability. The universe of ASCAP performances is so complicated and diverse that spending all the money collected would not exhaust the precision that could be obtained. Therefore, not maximum precision but maximum precision per dollar expended of members' money is the aim of the ASCAP sample.

We do not think that the problems which we have examined here have necessarily been solved in the best possible way for eternity. The situation that we are surveying keeps changing and techniques improve. The survey methods are under continuing study and review. We feel that we should keep trying to improve the survey, and that money invested in research will bring high returns.

SLIDE 10

THREE PROPERTIES OF THE ASCAP SAMPLE

1. It is a random sample.
2. It is a stratified sample.
3. It is a disproportionate sample.

As slide 10 indicates, three properties of the ASCAP sample are that it is random, stratified and disproportionate.

Why *random?* To be certain that a sample resembles as closely as possible the universe that it represents, the sample must be a random one. This means that the inclusion of any performance in the sample must be determined scientifically and objectively. No one at ASCAP has any discretion about what will be included in the sample. Choice for inclusion in the sample is made by independent experts and determined by mathematical laws—not by discretion, not by hit-or-miss techniques.

Why *stratified?* Data collected from samples are used to form estimates. Estimates are subject to imprecision. One way to increase sampling precision is to stratify or group licensees, or playings, or media, and then sample from each of these strata. For example, sampling principles tell us that if playings on local radio are much different than playings on local TV, then separately grouping or stratifying radio and TV stations prior to sampling will give a more reliable estimate of playings for the same expenditure of money.

Why *disproportionate?* Depth of sampling may be proportionate or disproportionate. If the ASCAP sample were proportionate, then every radio station would be sampled an equal number of hours. The same number of sampling units would be drawn from a $1,000 radio station as from a $30,000 radio station. Clearly playings on a $30,000 station are much more valuable than playings on a $1,000 station. Consequently, proportionate sampling would not give us greatest reliability of income distribution per survey dollar expended. This is one reason for disproportionate sampling. Generally, the more important a licensee is to the members, as measured by revenue paid to ASCAP, the larger the sample of performances from that licensee.

SLIDE 11

RANDOMNESS: WHAT IT IS AND HOW ACHIEVED

1. Scientific process of selection so that sample differs from the universe it represents only because of chance.
2. Which days of year, which times of day, and which stations included in the sample are determined by statistical laws.
3. Each playing has a knowable chance of inclusion in the sample.

The randomness referred to in Slide 11 results from a scientific process of selection.

By "random" we don't mean haphazard. By a random sample we mean a sample determined by the laws of probability. The process is mathematical. There is no personal discretion as to the choice of the playings which are sampled. The sampling units to be included in the sample are determined scientifically with random numbers. The result is that the sample is representative. It is like the universe, or totality, except as it departs from it by chance alone—not as the result of any bias or distortion. This is the procedure that is followed, for example, when a local radio program is included in the sample. No one at ASCAP has any choice as to the station, the day or the time of day that will be chosen, nor do any of the outside experts. There can be no partiality or prejudice since the sample is random. The particular program included is determined by mathematical laws.

SLIDE 12

SAMPLING PRECISION

1. Sampling precision is the degree to which a sample represents the universe.
2. The less the sampling precision, the greater the overstatement or understatement of a member's playings.
3. Sampling precision is greatest for a composition with many playings and is least when playings are few.
4. To increase sampling precision for works with few playings requires expensive, overall increases in sample size and leaves less money for member distribution.

Slide 12 suggests the problems in achieving measurement precision through sampling. Data collected from a sample yield an estimate. All estimates involve imprecision. For example, the number of residents of New York who were born in New York can be estimated by a sample. This estimate, however, will not be exact. The estimate will vary

somewhat from the results of a census for purely fortuitous reasons.

In the ASCAP sample the larger the number of playings of a particular composition sampled, the greater will be sampling precision. However, in order to increase precision for infrequently played tunes, we would have to increase the total sample size since we cannot tell at what hours or on what radio staions the infrequently played tunes will be broadcast. It would require a 20-fold increase in sample size and sample cost to obtain the same sampling precision for a composition turning up 50 times in the Survey as the precision now obtained for one turning up 1,000 times. Further, a 20-fold increase in sample size and cost would not be matched by a proportionate increase in precision.

An increase in sample costs means, of course, less money for member distribution. It might also be noted that an increase in sample size would result in a decrease in credit value in rough proportion to this increase. For example, double the sample size and we halve the credit value of a performance.

Since there are economic limits to increasing the precision of estimate for infrequently played compositions, lack of precision must be lived with. However, since lack of sampling precision is as likely to result in an overstatement as an understatement of performances, the resulting errors for a member will tend to cancel out.

SLIDE 13

CRITERIA FOR "REASONABLE" SAMPLING PRECISION

1. What constitutes "reasonable" sampling precision is not a problem of statistics but of economics.
2. Statistics can maximize sampling precision within a given budget.
3. Or, statistics can achieve a specified accuracy provided there is no budgetary restriction.
4. Hence, every sampling plan is a compromise between costs and accuracy.

Slide 13 states that the precision of the survey is at root an economic problem. The dimensions of the ASCAP survey job are such that sampling is necessary. Inherent in this method is sampling imprecision. How much inexactness of this kind we are willing to accept is not a problem of statistics. It is a problem of economics. Statistics is a science that can maximize sampling precision *given* the number of dollars of sampling expenditure. Statistics cannot tell us how much should be spent in sampling.

There are costs in achieving accuracy. There are limits to the accuracy that it is economically justifiable to achieve. The irregularities in distribution that are caused by sampling imprecision have to be weighed against the costs of increasing precision.

SLIDE 14

HOW SAMPLE IS STRATIFIED

1. By media: local radio, local TV, wired music and similar services.
2. By major geographic regions.
3. By type of community: standard metropolitan, other metropolitan, non-metropolitan, rural.
4. By size of station as measured by ASCAP license fee: under $100, $100-$1,000, $1,001-$10,000, over $10,000.
5. A stratum for solely FM stations.

Slide 14 brings us back to the problems of stratification or grouping. The purpose of stratification is to increase sampling precision by classifying licensees into groups that have significant characteristics in common. The laws of statistics indicate that when groupings by these characteristics are possible, stratification can increase sampling precision.

The ASCAP survey sample is stratified in a number of ways in an attempt to maximize sampling precision. The sample is stratified by media, by major geographic regions, by type of community, by size of station. There is a separate category for solely FM stations. Instead of drawing a random sample from the whole United States and Puerto Rico, a random sample is drawn from each of the stratified cells, *e.g.*, radio stations with a license fee of from $1,001-$10,000 in non-metropolitan communities in New England

SLIDE 15

REGIONAL STRATA

Region	Share of Local Radio 1961 Revenue	Sampling Units	No. of Six-Hour Tapes
New England	5.9%	5.9%	590
Middle Atlantic	16.0	16.0	1,604
East North Central	19.7	19.7	1,973
West North Central	9.9	9.9	988
South Atlantic	15.9	15.9	1,592
East South Central	6.6	6.6	660
West South Central	9.5	9.5	950
Mountain	3.9	3.9	397
Pacific	11.3	11.3	1,131
Other	1.3	1.3	127
Total	100.0%	100.0%	10,012

The figures in Slide 15, which relate to 1961, show how regional sampling is related to regional revenue. The strata are regional divisions used by the Federal Government in collecting and reporting many of its statistics. They are used for both local radio and local TV.

Our reasons for using these regional groupings is that type of music may vary by region. If musical compositions do not vary by region, then very little is lost because the added cost of geographic segmentation in the sample design is small.

The number of sampling units collected from any of these major geographic regions is determined by ASCAP revenue received from radio or TV licensees in these regions. For example, revenue from all local radio stations in the New England region—Maine, New Hampshire, Vermont, Massachusetts, Connecticut and Rhode Island—is 5.9% of all local radio revenue. Therefore, 5.9% of the sampling units, 590 six-hour tapes, are assigned to radio stations in New England. Because radio stations in the Pacific region—California, Washington and Oregon—con-

tribute about twice as many dollars to ASCAP as radio stations in New England, stations in the Pacific region are assigned about double the number of six-hour sampling units assigned to New England.

Each year when a new sample is drawn, the revenue for each of the geographical regions is updated so that hours of sampling are kept proportionate to current ASCAP collections.

SLIDE 16

STRATA INSIDE A REGION

	Local Radio			No. of
Middle Atlantic States	No. of Stations	1961 Revenue	Sampling Units	Six-Hour Tapes
Standard Metropolitan	90	10.3%	10.3%	1,026
Other Metropolitan	95	3.3	3.3	334
Non Metropolitan	116	2.4	2.4	244
Rural	—	—	—	—
Total: Middle Atlantic	301	16.0%	16.0%	1,604
Total: Local Radio	4,000	100.0%	100.0%	10,012

As may be seen from Slide 16, within each of the major geographic regions radio and TV stations have been further stratified by type of community.

Following the practice of the U.S. Bureau of the Census in many of its own sampling plans, stratification recognizes four types of community: standard metropolitan, other metropolitan, non-metropolitan and rural. Within each major geographic region each county has been classified into one of these categories. The basis for classifying a county depends on such things as degree of urbanness, population, type of industry, etc. In the region picked for illustrative purposes, the Middle Atlantic States (New York, New Jersey and Pennsylvania) there are no "rural" communities as defined by the Bureau of the Census.

In each of the groups of communities ASCAP radio or TV collections are used to determine allocation of sampling units. The principle followed is the same as that for allocating sampling units among major geographic regions. For example, in standard metropolitan areas of the Middle Atlantic States, ASCAP collected 10.3% of 1961 local radio revenue. Therefore 10.3% of the sampling units, 1,026 six-hour tapes, are assigned to stations in these standard metropolitan areas.

As will be noticed, the 90 stations in the standard metropolitan areas are only about 30% of the 301 stations in the Middle Atlantic States. These 90 stations, however, are assigned 64% of the 1,604 tapes allocated to the Middle Atlantic region because of their revenue importance to ASCAP.

Sampling depth has been determined by the Society's collections. Each year the allocation of sampling units has been updated to reflect any changes in collections.

SLIDE 17

STANDARD METROPOLITAN AREAS: MIDDLE ATLANTIC

		Local Radio: Share of 4 Areas		
New York	No. of Stations	1961 Revenue	Sampling Units	No. of Six-Hour Tapes
$ 100- 1,000	5	.3%	.3%	3
1,001-10,000	20	9.1	9.1	93
Over 10,000	14	48.6	48.6	499
Sub Total	39	53.0%	58.0%	595
Philadelphia	23	24.0	24.0	246
Pittsburgh	19	11.6	11.6	119
Buffalo	9	6.4	6.4	66
Total: 4 Areas	90	100.0%	100.0%	1,026

Slide 17 gives figures for the four standard Metropolitan areas of the Middle Atlantic region. They illustrate the

third basis for stratification—the grouping of licensees by size of license fee.

In the New York standard metropolitan area, for example, the 5 stations with license fees of $100 to $1,000 are grouped. The 20 stations with license fees of $1,001 to $10,000 are grouped. The 14 stations with license fees of over $10,000 are treated individually. Similar procedures are used throughout the local radio and TV samples. Grouping stations by size categories increases sampling precision, if type of music varies with size of station.

After stations are grouped by size, we again allocate sampling units on the basis of collections. In the New York standard metropolitan area the 5 stations with a license fee of $1,000 or under receive only three tapes out of 595 assigned to New York stations, because they accounted for only this proportion of collections from all New York stations. The over $10,000 stations were allocated 499 out of 595 tapes because 84.1% of the Society's collections from New York radio stations came from these fourteen stations.

SLIDE 18

RESULTS OF STRATIFIED SAMPLING

1. Increases sampling precision, if composition mix does differ among present strata.
2. Provides information for changing sampling strata to increase future precision if composition mix does not differ among existing strata.
3. Maintains same sampling precision as attainable with no stratification even if strata are wrongly chosen.

Slide 18 indicates the results of stratified sampling. As we have seen, local radio and local TV are stratified by major geographic regions, by types of community within region and by size of station within each type of community. What do we gain by these stratifications? The pur-

pose of stratification is to reduce sampling imprecision and to give greatest accuracy per dollar of expenditure. If type of composition does vary by region, by size of community or by size of station, there is a gain in sampling precision. There will be a more equitable distribution of income among ASCAP members. On the other hand, if there is not this consistent variation in compositions played by region, by size of the community or by size of station, we have lost nothing other than the costs of the stratification which are relatively small.

Because the ASCAP sample is a scientific probability sample, tests can be made to find out how the stratification could be improved. It will be possible to make many of these tests with the modern data processing equipment that ASCAP now uses.

SLIDE 19

DISPROPORTIONATE SAMPLING DEPTH

1. (Sampling depth) = (Total hours sampled) ÷ (Total hours of programming)
2. Sampling depth criteria should be:
   a. How much revenue ASCAP gets
   b. How costly to pick up and identify performances
   c. How varied is the composition mix
   d. How big is the universe, i.e., how many performances
3. Sampling design permits stepping up efficiency by changing sampling depth as survey generates knowledge of criteria.

Slide 19 focuses attention on the reasons for depth differences in the sampling that is done. Sampling depth is the number of units sampled divided by the number of units that could be sampled. One possible procedure would be to sample in the same depth every licensee included in this

sample. A $100,000 TV station broadcasting 14 hours a day would be sampled the same number of hours as a $100 radio station broadcasting 14 hours a day. We don't follow this procedure. Instead, we use disproportionate sampling.

With disproportionate sampling the proportion of units sampled can be varied systematically to achieve maximum efficiency per dollar of expenditure. It costs less to identify ASCAP playings from logs; greater sampling depth is warranted when reliable logs are available. Some licensees generate more income for ASCAP than others; sampling these licensees more heavily increases precision in our estimate of playings used by these licensees. The more varied the compositions played by a licensee or group of licensees, the more heavily they should be sampled. To take an unrealistic example: If a licensee played only one composition all day long, then anything other than a sample of one performance would be wasteful. We would want to sample much more deeply a station which played a number of different compositions.

A virtue of disproportionate sampling is that, as more information is obtained, sampling depth can be varied in recognition of differences in revenue, differences in costs, differences in the variability of compositions played, and differences in the number of performances. All of the information now being generated by the probability sample can be used to achieve these changes and to make sure that the sample is as efficient as is possible. By having a sampling design which calls for disproportionate sampling, we are free to step up efficiency by changing the depth of sampling systematically to adhere to the four criteria listed above.

SLIDE 29

REPRISE: THE ROAD WE HAVE TRAVELED

1. Why we must sample.
2. What the properties of our sampl are: (a) random, (b) stratified, (c) disproportionate.
3. What sampling precision is and the cost of increasing it.
4. How the sample is stratified to increase precision.
5. Why sampling depth is disproportionate (to improve sampling efficiency).

Landmarks along the road we have already traveled are recalled by Sl[illegible]9).

We sample because it would be too costly to take a census of every ASCAP performance. No money would be left for distribution to the membership.

The use of a random, stratified, disproportionate sample insures that maximum efficiency in estimating performances and equity in distribution of income will be achieved.

Randomness insures scientific, unbiased selection.

To increase sampling precision, stratification or grouping of licensees is used at a number of stages in the sampling procedure.

Disproportionate sampling is efficient and carries out the underlying theme of the survey, which is to follow the ASCAP dollar as far as it is reasonable and economical to do so.

Because the ASCAP sampling problem is so complex and because it is so costly to collect information, there will be imprecisions in estimating playings. One way to increase the precision of sampling measurement is to spend more money to make the sample larger. Against gains in precision, however, must be balanced the costs of these gains. Another way is to continually review and revise the sampling plan to make it more efficient. Particularly during the early stages of a new sampling job, expenditures on this kind of research can be very worthwhile.

SLIDE 21

THE MULTIPLIERS AND THEIR JOBS

Multipliers	Jobs
1. Statistical	To blow up sample to census size.
2. Economic	To recognize the different value of performances by different licensees.

Slide 21 lists two sets of multipliers which are an integral part of the survey. The statistical multipliers have the function of blowing up the sample to a census size. The economic multipliers have the job of recognizing that performances of ASCAP works by different licensees vary in value. In slides 22-26, we discuss in more detail the important job that each of these multipliers performs in seeing that performances are credited according to the revenue they generate.

SLIDE 22

STATISTICAL MULTIPLIERS

1. Compensating for different depths of sampling is job of statistical multipliers.
2. Function is to make possible scientific and efficient disproportionate sampling.
3. They blow up sample to census size.

Station	Assumed Actual Playings	Playings Sampled	×	Statistical Multiplier	=	Estimated Playings
A	100	2	×	50	=	100
B	100	5	×	20	=	100
C	100	100	×	1	=	100

Slide 22 introduces us to the statistical multipliers used in the ASCAP survey. They are necessary because sampling is disproportionate or in different depth.

Thus, in the example above, radio station C is sampled fifty times as deeply as radio station A and twenty times as deeply as radio station B. Without statistical multipliers the number of playings on station C would be estimated at fifty times those on A and twenty times those on B even though the playings on each were 100.

The statistical multiplier, computed by dividing total performances that could be sampled by total performances that are sampled, adjusts for differences in the sampling depth. Thus, in the example above, multiplying performances sampled by the statistical multiplier gives an estimate of 100 performances for each of the three stations.

Discussion of sampling depth and statistical multipliers has been in terms of performances. In fact, for both local radio and local television, sampling is now by hours of broadcast and the statistical multipliers are total hours of broadcast divided by total hours sampled. As the new survey generates information, it may be possible to further refine this procedure.

SLIDE 23

ECONOMIC MULTIPLIERS

1. Function is to attach economic value to a playing proportionate to what ASCAP collects.
2. Economic values of playings differ because license fees differ: e.g., a playing on a radio station with a $40,000 license fee generates many times the ASCAP income of a playing on a radio station paying $4,000.
3. Economic multipliers shape performance credits and member income to reflect this economic fact of life.

Slide 23 leads us on to a consideration of economic multipliers. The function of the statistical multipliers is to compensate for variations in depth of sampling and yield an estimate of *total* number of playings. The function of the

economic multipliers is to attach relative values to groups of performances.

License fees for radio stations have varied in the past from $12 to $90,000. For television stations the range has been from $200 to over $300,000.

The section that follows outlines how the survey takes into account the economic value of a playing. The system of economic multipliers is different in detail for networks and local radio and TV stations. In principle, however, all of the economic multipliers have the same purpose, namely, to place a value on each playing which is roughly proportionate to the revenue it generates for the Society.

SLIDE 24

ECONOMIC MULTIPLIERS SIMPLIFIED BY GROUPING SMALL LOCAL RADIO STATIONS

Revenue Class	1961 Revenue from Group		Number of Stations		Revenue per Station	Relative Economic Value
$ 100- 500	—	÷	—	=	—	—
501- 1,000	—	÷	—	=	—	—
1,001- 5,000	$9,878	÷	3	=	3,293	.12
5,001-10,000	13,827	÷	2	=	6,914	.34
Over $10,000	75,499	÷	4	=	W 10,776	.40
					X 14,699	.55
					Y 23,242	.87
					Z 26,782	1.00

The figures in Slide 24 show how economic multipliers are simplified by the grouping of small local stations.

Economic multipliers for local radio and local TV are computed in the same way. For simplicity six revenue classes are used. Stations already grouped by type of community within major geographic regions are sub-classified into one of these six revenue classes, depending on their annual license fees. Then, in each of these revenue classes,

except the ones over $10,000, the average revenue of the stations in that class is obtained. This average revenue is, in effect, the economic multiplier.

The example above is for radio stations in the standard metropolitan area of Cleveland. In this area there are three radio stations with an annual license fee of $1,001-$5,000. Total collections from these three stations in 1961 was $9,878. Average revenue from the three stations was $3,293. In the $5,001-$10,000 category the two stations had an average license fee of $6,914 in 1961. For stations with an annual license fee above $10,000, of which there are four in the Cleveland area, the license fee of the individual station is its economic multiplier.

The last column of the slide above indicates the relative economic value of performance on these various stations. Thus, a playing on the station with an annual license fee of $14,699 would receive 55% of the economic weight of a playing on the largest station, because its annual license fee is only 55% (14,699/26,782) of that of the largest station. A playing on a station with an annual license fee of $1,001 to $5,000 would receive only 12% of the economic weight of a playing on the largest station because the average license fee for stations in the $1001-$5000 revenue class is only 12% (3,293/26,782) of that of the largest station.

SLIDE 25

ECONOMIC VALUATION OF A NETWORK RADIO PERFORMANCE

Number of Stations Hooked in CBS, NBC	ABC	MBS	Relative Value of Performance
2-15	2-25	2-33	.150
16-30	26-51	34-65	.449
31-64	52-108	66-139	.661
65-98	109-166	140-214	.781
99-132	167-223	215-288	.901
133-166	224-281	289-361	1.021
167 and over	282 and over	362 and over	1.149

The way in which the economic valuation ascribed to a radio network performance is determined is illustrated in Slide 25. These economic weights are presently applied to all playings on commercial network radio programs and on sustaining segments of commercial network radio programs.

As with local radio and local TV, stations are grouped in determining economic weights. The economic weights are average values applying to groups of stations. At the present time the network is used as the pickup source and a census is made of logs of playings on commercial network radio programs and on sustaining segments of commercial network radio programs. Because initial research indicated that values of performances on NBC and CBS were not too far apart, a single functional relation sufficed for both these networks. Preliminary research has indicated the need for separate functional relations for ABC and MBS. Subsequent study may indicate the need for separate functional relations for each of the four networks.

Research indicated that the value of a playing does not change proportionately with the number of stations in the hookup for any given network. For example, on a CBS or NBC 90-station hookup the value of a playing is only about

1.7 times the value of a playing on a 30-station hookup (.781 ÷ .449 = 1.7).

Research also indicated that the average license fee for ABC affiliate stations was smaller than for CBS or NBC affiliates. The average license fee for MBS affiliates was the smallest of the four networks. The relative values for hookups on the different networks reflect this fact. Thus, on CBS and NBC the minimum station hookup necessary for a weight of .449 is 16. On ABC it takes a minimum of 26 stations and on MBS a minimum of 34 stations for a playing to receive this same weight of .449.

SLIDE 26

ECONOMIC VALUATION OF A NETWORK TELEVISION PERFORMANCE

Number of Stations Hooked in	Relative Value of Performance
up to 30	.33
31- 75	.58
76-105	.89
106-139	1.00
140-185	1.38
186 and over	1.60

The way in which the valuation of a TV network performance is determined is shown in Slide 26.

The same principles as for network radio have been followed in determining the economic weights for network TV performances. Research indicated that the value of a playing was sufficiently similar on ABC, CBS and NBC so that one function could be used for the three networks. As the table indicates, the value of a playing does not increase proportionately to the number of stations in the hookup. For example, a playing on a hookup of 80 stations is less than double the value of a playing on a hookup of 40

stations. The explanation is that as additional stations are added, they tend to be stations paying less revenue to ASCAP.

As with all other features of the survey, the plan is to review periodically the network TV economic multipliers to see what changes or refinements may be justified either among or within the networks.

Continuing review of the survey design will ensure that ASCAP income is distributed scientifically and equitably to the membership.

SLIDE 27

PRIMARY STRATA CREDITS

1. The purpose of statistical and economic multipliers is to make sure that within each primary stratum (e.g. local radio) performances receive their proportionate share of ASCAP dollars from licensees in the stratum.
2. The survey is so designed that total credit shares for each of the five primary strata are proportionate to revenue attributable to licensees in these strata.
3. On the basis of 1961 revenue the allocation of total credits among primary strata is:

	Credits	
	Number	% of Total
Network Commercial Radio*	527,500	2.11%
All other Radio	7,700,000	30.80
TV Network	10,697,500	42.79
TV Local	5,232,500	20.93
Wired Music and Similar Services	842,500	3.37
	25,000,000	100.00%

*ABC, CBS, MBS, NBC commercial programs including sustaining segments of commercial programs.

At the end of each distribution period and at the end of the year, the survey plan requires that performances of

ASCAP compositions in each of the primary strata earn credits in proportion to the revenue contribution of that stratum to ASCAP. Slide 27 indicates the distribution of total credits among primary strata on the basis of 1961 collections.

Each year the ASCAP survey generates about 25 million writer credits. Because 42.79% of the Society's receipts from the five primary strata were attributable in 1961 to TV network, performances on network TV generated about 10,-[illegible]7,500 credits or 42.79% of the total of 25 millions. Because [illegible]% of receipts from the five primary strata were attributable in 1961 to local TV, performances on local TV generated about 5,232,500 credits or 20.93% of total credits. This same procedure is followed for the other three primary strata.

Some members with performances on one medium will have similar performances on other media. There would be rough justice for them even if credits were not controlled by primary strata. Under the present system, however, where credits for a stratum are determined by revenue from that stratum, all members are protected. Thus, the composer whose works appear only or primarily on local radio knows that the income generated for ASCAP by his performances will not be dissipated in credits for performances on network radio, TV or wired music or similar services.

Since there are annual changes in collections attributable to primary strata, credit shares are revised annually to reflect these changes.

Glossary of Terms

1. *Universe*

The universe is all the items that make up the groups to be measured.

2. *Census*

A census is a complete count. Examples: the count of all the people in the United States made every 10 years; the count of all performances on the TV networks we make continuously.

3. *Sample*

To sample is to measure a characteristic of a universe by taking less than a complete count so that a smaller group represents the whole group. Example: the Gallup poll for charting fluctuations of a President's popularity.

4. *Sampling Unit*

A sampling unit is a period of sampled programming and differs in size for different media. It is an essential mechanism for drawing samples efficiently. Example: on local radio the sampling unit is the taping of six hours of programming.

5. *Random Sampling*

Random sampling is a process which assures that each item of the total universe to be sampled has a scientifically determinable chance of being included in the sample. Random sampling is not capricious or haphazard, but instead is governed solely by laws of probability which determine what is included in the sample. Example: the ASCAP sample, by means of scientifically controlled selection that eliminates discretion in drawing the sample, produces a fair representation of the relative frequency of the playings of compositions of members.

6. *Precision of Sampling*

Roughly, precision of sampling is how close the sample measure comes to the measurement that would result from

a complete count. Sampling precision is greater for compositions frequently played than for compositions rarely played. Lack of sampling precision is as likely to result in an over-estimate of performances as in an under-estimate.

7. *Reliability of Sampling*

Sampling reliability is the faithfulness with which measurements based on a sample conform to what the measurement would have been had it been possible to take a complete and accurate count. Reliability is also affected by such things as identification, clerical care, and the representativeness of the sample, as well as by the size of a scientific random sample.

8. *Stratified Sampling*

A stratified sample is one that is built up in layers by first dividing the universe into smaller groups (strata) that are similar in ways considered relevant for the measurement. Then a separate sample is drawn from each. Sample stratification can assure representation of each stratum and can increase sampling efficiency. Examples: we separately sample radio and television.

9. *Disproportionate Sampling*

In disproportionate sampling the fraction of the total which is sampled (sampling depth) can differ systematically for different parts of the survey. Its job is to step up the efficiency of the sample by measuring a bigger percentage where playings are more valuable or more variable, and a smaller percentage where playings are less valuable or less variable.

10. *Sampling Efficiency*

The efficiency of a sample measures how much precision you get for your money. It reflects the accuracy of measurement of the total universe that is obtained for any given amount spent on sampling. The science of sampling is to make sampling precision as great as possible for any given outlay. Sampling efficiency can usually be increased by stratification and by disproportionate random sampling.

11. Media

Media are the vehicles or channels through which musical compositions are transmitted to the listener. Examples: network radio, local TV, wired music and similar services.

12. Wired Music and Similar Services

Wired music and similar services are those where a licensee furnishes a recorded library of music to subscribers. These music services include Muzak, Seeburg, AMI, Conley.

13. Pickup Source

Pickup source refers to the point at which we learn about a musical performance in the survey. Example: in the ASCAP survey, we learn about performances on network television programs from the network rather than from each station affiliated with the network.

14. Pickup Mechanics

Pickup mechanics refers to the way in which the survey finds out what was performed, for example, by collecting and studying a written record of the program (logging) or by recording and listening to a taped recording of the program.

15. Surprise

Surprise is the absence of any advance notice that a particular station or program is to be sampled. Surprise is an essential characteristic of an honest and effective bank audit or of the sampling of performances on a radio or television program which could be rigged to be unrepresentative if there were advance notice.

16. Statistical Multiplier

A statistical multiplier blows up the sample to the same size as the census. Example: If 100 men out of 10,000 in an area were asked what sport they liked best, the answers in each category would have to be multiplied by 100 (10,000/100) to get an estimate of the total number of men out of this 10,000 who like each particular sport best.

17. *Economic Multiplier*

An economic multiplier gives a weight to the performances picked up which reflects the importance in terms of ASCAP collections from the licensee or groups of licensees surveyed. Example: the economic multiplier for a sampled playing on any one of a group of stations where the average annual license fee is $8,000 is twice that for a playing where the average annual license fee for the group of stations is $4,000.

18. *Credit*

A credit is a measure of performances weighted by statistical and economic multipliers after application of the weighting rules.

19. *Weighting Rules*

Weighting rules define the weights for different uses of compositions. The survey design and implementation have nothing to do with either the determination or the application of weighting rules.

E 254

CBS v. ASCAP

CX 2, Exhibit No. 13

ASCAP Financial Statements for the calendar years 1960-1969, with attached cover letters from Stanley Adams to "Dear Member", dated 4/11/61, 4/19/62, 4/1/63, 4/18/64, 4/15/65, 4/20/66, 4/24/67, 4/4/68, 4/2/69, 4/9/70, respectively.

MURRAY HILL 8-9000

E 255

CABLE ADDRESS: ASCAP, NEW YORK

59

AMERICAN SOCIETY OF COMPOSERS, AUTHORS AND PUBLISHERS
575 MADISON AVENUE
NEW YORK 22, N. Y.

STANLEY ADAMS
PRESIDENT

April 11, 1961
No. . . 7715

Dear Member:

In accordance with our usual practice, attached is the Society's financial statement for the last calendar year showing "Receipts, Expenses and Distributions".

As you are aware, we usually take the opportunity afforded by the general membership meetings to bring you up to date on the financial and other affairs of the Society. However, since many of the members are unable to attend because of other committments and the distances involved, we are forwarding each of you the enclosed report.

Notwithstanding the increased costs of operation, gain in income enabled us to distribute more in 1960 than in 1959. Our membership now stands at 5,299 active writers; 633 non-participating writer members; and 1,727 publisher members.

Cordially yours,

Stanley Adams

STANLEY ADAMS

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enc.

RECEIPTS, EXPENSES AND DISTRIBUTIONS FOR
YEAR ENDED DECEMBER 31, 1960

Receipts		
From Licenses	$ 31,983,789.61	
From Interest on U.S. Treasury Bills and Notes	249,590.33	
From Membership Dues	110,755.37	
		$ 32,344,135.31
Expenses - As per Schedule "A"		6,131,445.53
Balance Available for Distribution		$ 26,212,689.78
Distributions		
Paid Members		
April	$ 6,107,829.64	
July	6,402,506.12	
October	6,183,045.74	
December	6,532,600.05	
	$ 25,225,981.55	
Set Aside for Payments to Foreign Societies	850,716.52	
		$ 26,076,698.07

C E R T I F I C A T E

We have made an audit and examination of your records of revenues and disbursements as recorded on your books for the Year ended December 31, 1960. Our examination was made in accordance with generally accepted auditing standards and accordingly included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.

In our opinion, the accompanying Statement of Revenues, Expenses and Distributions is a true and correct statement of your operations for the Year ended December 31, 1960 and is in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding year.

Respectfully submitted,

JOYCE & MATTIS

SCHEDULE A

DETAIL OF EXPENSES

Salaries and Compensation			
Home Office			
Distribution	$ 1,007,815.14		
Accounting and Auditing	520,291.44		
Executive and General	672,704.98	$ 2,200,811.56	
Branch Office		713,865.00	
Legal (Including Retainers)		372,665.06	
			$ 3,287,341.62
Branch Office Expenses			649,643.94
Home Office Expenses			
Rent and Electric			172,207.14
Furniture, Fixtures and Alterations			33,373.00
Building Service, Maintenance and Repairs			19,514.37
Telephone and Telegraph			37,497.47
Postage			45,085.02
Printing and Stationary			64,843.10
Licensing and Collections			131,279.24
Auditing			226,611.36
Auditing -- Joyce & Mattis			37,365.00
Distribution - (Index, Program, Royalty & Tabulating Depts.)			450,327.95
Legal			133,125.25
Advertising and Publicity			178,496.58
Dues and Subscriptions			30,892.27
Memorial Funds			35,396.02
Nathan Burkan Memorial Competition			18,198.44
Traveling, Special Membership Meetings and Dinners			77,651.85
Committee Meetings			16,226.65
Directors Fees			10,675.00
Employees Pension Trust, Group Ins. & Hospitalization			129,165.15
Miscellaneous			212,666.79
Relief			133,862.32
			$ 6,131,445.53

MURRAY HILL 6-8800

E 258
CABLE ADDRESS: ASCAP, NEW YORK

AMERICAN SOCIETY OF COMPOSERS, AUTHORS AND PUBLISHERS
575 MADISON AVENUE
NEW YORK 22, N. Y.

STANLEY ADAMS
PRESIDENT

April 19, 1962
NO. . . . 7869

Dear Member:

As you are aware, we usually take the opportunity afforded by the general membership meetings to bring you up to date on the financial and other affairs of the Society. However, since many of the members are unable to attend because of other commitments and the distances involved, we are forwarding each of you the enclosed report.

In accordance with our practice, attached is the Society's financial statement for the year ending December 31, 1961 showing "Receipts, Expenses and Distributions". You will note receipts from licenses, interest and dues exceeded 1960 by $847,851.87.

The membership now stands at 5,594 active writer members; 752 non-participating writer members; and 1,913 publisher members.

Cordially yours,

Stanley Adams

STANLEY ADAMS

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att.

RECEIPTS, EXPENSES AND DISTRIBUTIONS FOR
YEAR ENDED DECEMBER 31, 1961

Receipts

From Licenses	$ 32,891,095.07	
From Interest on U.S. Treasury Bills and Notes	167,583.05	
From Membership Dues	133,309.06	
		$ 33,191,987.18
[illegible] - As per schedule "A"		6,599,746.86
Balance Available for Distribution		$ 26,592,240.32

Distributions

Paid Members and Set Aside for Payments to Foreign Societies

April	$ 6,574,113.20	
July	6,506,865.86	
October	6,503,330.74	
December	6,873,729.28	
		$ 26,458,039.08

C E R T I F I C A T E

We have made an audit and examination of your records of revenues and disbursements as recorded on your books for the Year ended December 31, 1961. Our examination was made in accordance with generally accepted auditing standards and accordingly included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.

In our opinion, the accompanying Statement of Revenues, Expenses and Distributions is a true and correct statement of your operations for the Year ended December 31, 1961 and is in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding year.

Respectfully submitted,

JOYCE & MATTIS

SCHEDULE A

DETAIL OF EXPENSES

Salaries and Compensation			
Home Office			
Distribution	$ 1,066,770.77		
Accounting & Auditing	606,494.12		
Executive and General	768,532.25		
Legal	182,772.11		
		$ 2,624,569.25	
Branch Office		740,702.46	
			$ 3,365,271.71
Expenses			
Home Office			
Rent and Electric	207,143.26		
Furniture, Fixtures and Alterations	39,827.80		
Building Service, Maintenance and Repairs	19,897.71		
Telephone and Telegraph	44,142.58		
Postage	43,082.58		
Printing and Stationary	66,923.37		
Licensing & Collections	164,027.51		
Auditing	237,098.24		
Auditing-Joyce & Mattis	39,720.00		
Distribution (Index, Program, Royalty & Tabulating Depts.)	531,576.30		
Legal	214,743.02		
Advertising & Publicity	190,390.84		
Dues & Subscriptions	23,809.83		
Memorial Funds	30,995.34		
Nathan Burkan Memorial Competition	13,958.26		
Traveling and Special Membership Meetings	46,653.28		
Committee Meetings	23,020.16		
Directors Fees	10,122.00		
Employees Pension Trust, Group Insurance & Hospitalization	139,756.77		
Taxes	214,865.94		
Miscellaneous	27,513.12		
Relief	118,366.56		
		2,447,634.47	
Branch Office			
Rent	62,870.79		
Investigation	360,718.09		
Legal	141,990.27		
Furniture and Equipment	57,692.00		
Miscelluneous	163,569.53		
		786,840.68	
			3,234,475.15
			$ 6,599,746.86

MURRAY HILL 8-0800

CABLE ADDRESS: ASCAP, NEW YORK

E 261

MERICAN SOCIETY OF COMPOSERS, AUTHORS AND PUBLISHERS
575 MADISON AVENUE
NEW YORK 22, N. Y.

STANLEY ADAMS
PRESIDENT

April 1, 1963
No. . . .8026

Dear Member:

As you are aware, we usually take the opportunity afforded by the general membership meetings to bring you up to date on the financial and other affairs of the Society. However, since many of the members are unable to attend because of other commitments and the distances involved, we are forwarding each of you the enclosed report.

In accordance with our practice, attached is the Society's financial statement for the Year ended December 31, 1962 showing "Receipts, Expenses and Distributions". You will note receipts from licenses, interest and dues exceeded 1961. Expenses were slightly higher.

The membership now stands at 5,911 active writer-members; 910 non-participating writer members; and 2,150 publisher members.

Cordially yours,

STANLEY ADAMS

SA:hm
att.

RECEIPTS, EXPENSES AND DISTRIBUTIONS FOR
YEAR ENDED DECEMBER 31, 1962

Receipts		
From Licenses	$34,841,010.94	
From Interest on Investments	297,482.46	
From membership dues	140,539.60	
		$ 35,279,033.00
Expenses (as per Schedule "A")		7,058,010.41
Balance Available for Distribution		$ 28,221,022.59
Distributions to Members and Monies set aside for payments to Foreign Societies		
April	$ 6,494,899.44	
July	6,964,155.82	
October	7,412,011.67	
December	7,407,130.91	
		$ 28,278,197.84

CERTIFICATE

We have made an audit and examination of your records of revenues and disbursements as recorded on your books for the Year ended December 31, 1962. Our examination was made in accordance with generally accepted auditing standards and accordingly included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.

In our opinion, the accompanying Statement of Revenues, Expenses and Distributions is a true and correct statement of your operations for the Year ended December 31, 1962 and is in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding year.

Respectfully submitted,

JOYCE & MATTIS

SCHEDULE A

DETAIL OF EXPENSES

Salaries and Compensation			
Home Office			
Distribution	$ 1,177,432.08		
Accounting and Auditing	654,326.60		
Legal	209,277.20		
Executive and General	820,333.26	$ 2,861,369.14	
Branch Office		753,859.28	$ 3,615,228.42
Expenses			
Home Office			
Rent and Electric	223,304.60		
Furniture, Fixtures and Alterations	33,288.38		
Building Service, Maintenance and Repairs	20,155.43		
Telephone and Telegraph	47,503.37		
Postage	37,937.58		
Printing and Stationery	59,710.44		
Licensing and Collections	133,833.60		
Auditing	233,306.32		
Auditing -- Joyce & Mattis	38,955.00		
Distribution (Index, Program, Royalty, and Tabulating Depts.)	624,443.92		
Legal	280,026.52		
Advertising and Publicity	199,214.61		
Dues and Subscriptions	27,920.90		
Memorial Funds	21,762.89		
Nathan Burkan Memorial Competition	20,858.70		
Traveling and Special Membership Meetings	19,049.05		
Committee Meetings	31,019.94		
Directors Fees	8,207.00		
Employees Pension Trust, Group Insurance, and Hospitalization	171,556.44		
Taxes (City, State, Federal etc.)	217,771.92		
Miscellaneous	21,850.12		
Relief	126,146.60	2,597,823.33	
Branch Office (23 offices)			
Rent	61,893.58		
Investigation	366,011.83		
Legal	194,499.70		
Furniture and Equipment	61,564.37		
Miscellaneous	160,988.78	844,958.66	
			3,442,781.99
			$ 7,058,010.41

E 264

MURRAY HILL 6-8800

CABLE ADDRESS: ASCAP, NEW YORK

AMERICAN SOCIETY OF COMPOSERS, AUTHORS AND PUBLISHERS
575 MADISON AVENUE
NEW YORK, N. Y. 10022

STANLEY ADAMS
PRESIDENT

April 28, 1964
No. . . .9083

Dear Member:

As you are aware, we usually take the opportunity afforded by the general membership meetings to bring you up to date on the financial and other affairs of the Society. However, since many of the members are unable to attend because of other commitments and the distances involved, we are forwarding each of you the enclosed report

This report is the Society's financial statement for the year ended December 31, 1963, showing "Receipts, Expenses, and Distributions". You will note that receipts from license fees, interest and dues substantially exceeded 1962. Expenses for 1963 were slightly higher. At the close of the year, there were 7,266 writer members and 2,368 publisher members.

Cordially yours,

STANLEY ADAMS

SA:L
Att.

RECEIPTS, EXPENSES AND DISTRIBUTIONS
FOR YEAR ENDED DECEMBER 31, 1963

Receipts

From Licenses	$37,305,743.46	
From Interest on Investments	351,283.36	
From Membership Dues	141,881.65	
		$37,798,908.47
Expenses (As per Schedule "A")		7,213,480.06
Balance Available for Distribution		$30,585,428.41

Distributions to Members and Monies set aside for payment to Foreign Societies

April	$ 6,703,296.21	
July	7,364,227.00	
October	8,354,593.74	
December	8,126,120.28	
		$30,548,237.23

CERTIFICATE

We have made an audit and examination of your records of revenues and disbursements as recorded on your books for the Year ended December 31, 1963. Our examination was made in accordance with generally accepted auditing standards and accordingly included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.

In our opinion, the accompanying Statement of Revenues, Expenses and Distributions is a true and correct statement of your operations for the Year ended December 31, 1963 and is in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding year.

Respectfully submitted,

JOYCE & MATTIS

SCHEDULE "A"

Salaries and Compensation			
Home Office			
Distribution	$1,295,261.94		
Accounting and Auditing	686,082.47		
Legal	216,964.42		
Executive and General	729,699.75	$2,928,008.58	
Branch Offices		784,263.89	
			$3,712,272.47
Expenses			
Home Office			
Rent and Electric	236,768.69		
Furniture, Fixtures and Alterations	8,479.76		
Building Service, Maintenance and Repairs	20,599.58		
Telephone and Telegraph	48,844.87		
Postage	50,850.04		
Printing and Stationery	58,816.14		
Licensing and Collections	148,165.05		
Accounting and Auditing	257,724.34		
Auditing - Joyce & Mattis	39,115.00		
Distribution (Index, Program, Royalty, Foreign, and Tabulating Departments)	588,336.83		
Legal	176,117.17		
Advertising and Publicity	243,018.60		
Dues and Subscriptions	17,510.67		
Memorial Funds	19,252.01		
Nathan Burkan Memorial Competition	19,897.96		
Traveling and Special Membership Meetings	19,804.84		
Committee Meetings	38,336.10		
Directors Fees	7,833.00		
Employees Pension Trust, Group Insurance, and Hospitalization	179,791.48		
Taxes (Federal, State & City)	226,251.46		
Miscellaneous	27,915.84		
Relief	149,791.58	2,583,241.01	
Branch Offices (24 offices)			
Rent	68,795.72		
Investigation	404,795.60		
Legal	192,916.64		
Furniture and Equipment	70,198.50		
Miscellaneous	181,260.12	917,966.58	
			3,501,207.59
			$7,213,480.06

E 267

CABLE ADDRESS: ASCAP, NEW YORK

MURRAY HILL 8-6000

AMERICAN SOCIETY OF COMPOSERS, AUTHORS AND PUBLISHERS
575 MADISON AVENUE
NEW YORK, N. Y. 10022

STANLEY ADAMS
PRESIDENT

April 15, 1965
No. . . . 9253

Dear Member:

As you are aware, we usually take the opportunity afforded by the general membership meetings to bring you up to date on the financial and other affairs of the Society. However, since many of the members are unable to attend because of other commitments and the distances involved, we are forwarding each of you the enclosed report.

This report is the Society's financial statement for the year ended December 31, 1964, showing "Receipts, Expenses, and Distributions". You will note that receipts from license fees, interest and dues substantially exceeded 1963. Expenses for 1964 were slightly higher. At the close of the year, there were 7,656 writer members and 2,505 publisher members.

Cordially yours,

STANLEY ADAMS

SA:L
Att.

RECEIPTS, EXPENSES AND DISTRIBUTIONS
FOR YEAR ENDED DECEMBER 31, 1964

Receipts		
From Licenses	$39,494,024.37	
From Interest on Investments	530,791.27	
From Membership Dues	157,491.91	
		$40,182,307.55
Expenses (As Per Schedule "A")		7,937,378.43
Balance Available for Distribution		$32,244,929.12
Distributions to Members and Monies set aside for payment to Foreign Societies		
April	$ 6,881,773.50	
July	7,894,017.83	
October	8,975,560.81	
December	8,445,433.70	
		$32,196,785.84

CERTIFICATE

We have made an audit and examination of your records of revenues and disbursements as recorded on your books for the Year ended December 31, 1964. Our examination was made in accordance with generally accepted auditing standards and accordingly included such tests of the accompanying records and such other auditing procedures as we considered necessary in the circumstances.

In our opinion, the accompanying Statement of Revenues, Expenses and Distributions is a true and correct statement of your operations for the Year ended December 31, 1964 and is in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding year.

Respectfully submitted,

JOYCE & MATTIS

SCHEDULE "A"

Salaries and Compensation			
Home Office			
Distribution	$1,424,759.58		
Broadcast Auditing and Accounting	740,781.07		
Licensing and Collections	374,832.25		
Legal	236,777.11		
Executive and General	492,033.81	$3,269,183.82	
Branch Office		805,677.27	
			$4,074,861.09
Expenses			
Home Office			
Rent and Electric	274,098.60		
Furniture and Fixtures	1,555.67		
Alteration Expense	57,893.50		
Building Service and Maintenance	18,992.22		
Telephone and Telegraph	55,416.90		
Postage	53,985.33		
Printing, Stationary and Microfilming	59,673.61		
Distribution (Index, Program, Royalty and Data Processing Dept.	467,070.69		
Broadcast Auditing and Accounting	282,638.51		
Auditing - Joyce and Mattin	39,309.00		
Licensing and Collections	144,301.80		
Legal	290,710.80		
Advertising and Publicit	291,271.82		
Dues and Subscriptions	30,154.02		
Memorial Funds	20,160.78		
Nathan Burkan Memorial Competition	22,323.00		
Traveling and Special Membership Meetings	30,690.90		
Committee Fees and Expenses	22,177.71		
Directors Fees and Expenses	28,188.27		
Employees Pension Trust, Group Insurance and Hospitalization	272,558.50		
Taxes (Federal, State and City)	235,471.43		
Miscellaneous	38,877.41		
Relief	181,520.91	2,919,041.38	
Branch Office (24 Offices)			
Rent	72,606.95		
Investigation	444,223.10		
Legal	151,464.36		
Furniture, Fixtures and Automobiles	81,981.40		
Miscellaneous (General Office Expenses, Taxes, etc.)	193,200.15	943,475.96	
			3,862,517.34
			$7,937,378.43

E 270

AMERICAN SOCIETY OF COMPOSERS, AUTHORS AND PUBLISHERS
575 MADISON AVENUE
NEW YORK, N. Y. 10022

STANLEY ADAMS
PRESIDENT

April 20, 1966
No. . . . 9435

Dear Member:

As you are aware, we usually take the opportunity afforded by the general membership meetings to bring you up to date on the financial and other affairs of the Society. However, since many of the members are unable to attend because of other commitments and the distances involved, we are forwarding each of you the enclosed report.

The report, prepared by an independent auditing firm, is the Society's financial statement for the year ended December 31, 1965, showing "Domestic Receipts, Expenses and Distributions". As stated in the auditors' report, the percentage of operation for 1965, based on domestic and foreign receipts, was 17.1%. At the close of the year, there were 8,182 writer members and 2,700 publisher members.

Cordially yours,

Stanley Adams

STANLEY ADAMS,
President

SA:R
Att.

DOMESTIC RECEIPTS, EXPENSES AND DISTRIBUTIONS
FOR YEAR ENDED DECEMBER 31, 1965

Domestic Receipts:		
From Licenses	$41,896,415.24	
From Interest on Investments	655,006.72	
From Membership Dues	154,946.47	
		$42,706,368.43
Expenses (As Per Schedule "A")		8,288,692.00
Balance Available for Distribution		$34,417,676.43
Distributions from Domestic Receipts to Members and Monies set aside for payments to Foreign Societies		
April	7,260,342.90	
July	8,305,584.67	
October	9,434,594.05	
December	9,216,623.25	
		$34,217,144.87

CERTIFICATE

We have made an audit and examination of your records of revenues and disbursements as recorded on your books for the Year ended December 31, 1965. In addition to domestic receipts there was received during the year 1965 a total of $5,738,440.94 from foreign societies. The percentage of operation for the year 1965, based on domestic and foreign receipts is 17.1%. Our examination was made in accordance with generally accepted auditing standards and accordingly included such tests of the accompanying records and such other auditing procedures as we considered necessary in the circumstances.

In our opinion, the accompanying Statement of Domestic Revenues, Expenses and Distributions and the amount received from foreign societies is true and correct for 1965, and is in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding year.

Respectfully submitted,

JOYCE, MATTIS & JOHNSON

SCHEDULE "A"

Salaries and Compensation			
Home Office			
Distribution	$1,412,[illegible].89		
Broadcast Auditing and Accounting	794,[illegible]5.95		
Licensing and Collections	416,444.25		
Legal	240,211.74		
Executive and General	497,666.58	$3,360,461.41	
Branch Office		853,954.46	
			$4,214,415.87
Expenses			
Home Office			
Rent and Electric	274,618.54		
Furniture and Fixtures	43,404.17		
Alteration Expense	168,102.20		
Building Service and Maintenance	20,534.32		
Telephone and Telegraph	59,583.40		
Postage	54,683.66		
Printing, Stationery and Microfilming	65,276.84		
Distribution (Index, Program, Royalty and Data Processing Dept.)	197,754.24		
Broadcast Auditing and Accounting	291,235.73		
Auditing - Joyce, Mettis & Johnson	42,101.00		
Licensing and Collections	466,067.51		
Legal	173,242.75		
Advertising and Publicity	162,135.13		
Dues and Subscriptions	22,538.38		
Memorial Funds	30,683.75		
Nathan Burkan Memorial Competition	22,284.51		
Traveling and Special Membership Meetings	24,474.79		
Committee Fees and Expenses	21,583.52		
Directors Fees and Expenses	27,246.20		
Employees Pension Trust, Group Insurance and Hospitalization	178,391.62		
Taxes (Federal, State and City)	406,653.80		
Miscellaneous	45,627.89		
Relief	186,525.13		
		2,984,749.68	
Branch Office (24 Offices)			
Rent	78,088.54		
Investigation	526,857.70		
Legal	175,907.47		
Furniture, Fixtures and Autos	92,028.73		
Miscellaneous (General Office Expenses, Taxes, etc.)	214,644.01		
		1,089,526.45	
			4,074,276.13
			$8,288,692.00

AREA CODE 212 580-0800

CABLE ADDRESS: ASCAP, NEW YORK

E 273

AMERICAN SOCIETY OF COMPOSERS, AUTHORS AND PUBLISHERS
575 MADISON AVENUE
NEW YORK, N. Y. 10022

STANLEY ADAMS
PRESIDENT

April 24, 1967
No. . . . 9725

Dear Member:

As you are aware, we usually take the opportunity afforded by the general membership meetings to bring you up to date on the financial and other affairs of the Society. However, since many of the members are unable to attend because of other commitments and the distances involved, we are forwarding each of you the enclosed report.

The report, prepared by an independent auditing firm, is the Society's financial statement for the year ended December 31, 1966, showing "Domestic Receipts, Expenses and Distributions". As stated in the auditors' report, the percentage of operation for 1966, based on domestic and foreign receipts, was 15.58%. At the close of the year, there were 8,766 writer members and 2,889 publisher members.

Cordially yours,

Stanley Adams

STANLEY ADAMS,
President

SA:R
Att.

DOMESTIC RECEIPTS, EXPENSES AND DISTRIBUTIONS
FOR YEAR ENDED DECEMBER 31, 1966

Domestic Receipts:

From Licenses	$45,681,586.65	
From Interest on Investments	717,524.71	
From Membership Dues	181,514.70	
		$46,580,626.06
Expenses (As Per Schedule "A")		8,205,771.96
Balance Available for Distribution		$38,374,854.10

Distributions from Domestic Receipts to Members and Monies set aside for payments to Foreign Societies

April	8,098,728.13	
July	9,393,539.72	
October	10,313,423.76	
December	10,538,083.35	
		$38,343,774.96

CERTIFICATE

We have made an audit and examination of your records of revenues and disbursements as recorded on your books for the Year ended December 31, 1966. In addition to domestic receipts there was received during the year 1966 a total of $6,092,964.55 from foreign societies. The percentage of operation for the year 1966, based on domestic and foreign receipts is 15.6%. Our examination was made in accordance with generally accepted auditing standards and accordingly included such tests of the accompanying records and such other auditing procedures as we considered necessary in the circumstances.

In our opinion, the accompanying Statement of Domestic Revenues, Expenses and Distributions and the amount received from foreign societies is true and correct for 1966, and is in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding year.

Respectfully submitted,

JOYCE, MATTIS & JOHNSON

SCHEDULE "A"

Home Office			
Distribution	$1,125,481.48		
Broadcast Auditing & Accounting	821,306.88		
Licensing and Collections	464,924.13		
Legal	248,997.28		
Executive and General	535,111.18	$3,495,820.95	
Branch Office		880,329.94	
			$4,376,150.89
Expenses			
Home Office			
Rent and Electric	300,919.97		
Furniture and Fixtures	4,931.29		
Alteration Expense	3,964.75		
Building Service and Maintenance	25,085.04		
Telephone and Telegraph	56,065.75		
Postage	50,677.94		
Printing, Stationery & Microfilming	71,259.22		
Distribution (Index, Program, Royalty and Data Processing Dept.)	426,163.65		
Broadcast Auditing and Accounting	298,390.58		
Auditing - Joyce, Mattis & Johnson	41,203.00		
Licensing and Collections	241,189.63		
Legal	101,927.62		
Advertising and Publicity	116,283.65		
Dues and Subscriptions	19,930.52		
Memorial Funds	38,804.23		
Nathan Burkan Memorial Competition	22,227.13		
Traveling and Special Membership Meetings	29,098.50		
Committee Fees and Expenses	17,842.82		
Directors Fees and Expenses	26,568.87		
Employees Pension Trust, Group Insurance and Hospitalization	229,[illegible]2.77		
Taxes (Federal, State and City)	259,038.90		
Miscellaneous	88,955.08		
Relief	228,982.37		
		2,699,493.28	
Branch Office (24 Offices)			
Rent	77,674.26		
Investigation	589,665.52		
Legal	174,228.55		
Furniture, Fixtures and Autos	62,174.98		
Miscellaneous (General Office Expenses, Taxes, etc.)	226,384.48		
		1,130,127.79	
			3,829,621.07
			$8,205,771.96

AREA CODE 212 586-8000

CABLE ADDRESS: ASCAP, NEW YORK

E 276

AMERICAN SOCIETY OF COMPOSERS, AUTHORS AND PUBLISHERS
575 MADISON AVENUE
NEW YORK, N. Y. 10022

STANLEY ADAMS
PRESIDENT

April 4, 1968
No. . . .9867

Dear Member:

As you are aware, we usually take the opportunity afforded by the general membership meetings to bring you up to date on the financial and other affairs of the Society. However, since many of the members are unable to attend because of oth r commitments and the distances involved, we are forwarding each of you the enclosed report.

The report, prepared by an independent auditing firm, is the Society's financial statement for the year ended December 31, 1967, showing "Domestic Receipts, Expenses and Distributions") As stated in the auditors' report, the percentage of operation for 1967, based on domestic and foreign receipts, was 15.88%. At the close of the year, there were 9,439 writer members and 3,084 publisher members.

Cordially yours,

Stanley Adams

STANLEY ADAMS,
President

SA:R
Att.

DOMESTIC RECEIPTS, EXPENSES AND DISTRIBUTIONS FOR YEAR ENDED DECEMBER 31, 1967

Domestic Receipts:

From Licenses	$47,886,852.84	
From Interest on Investments	945,377.13	
From Membership Dues	183,348.74	
		$49,015,578.71
Expenses (As Per Schedule "A")		8,758,575.98
Balance Available for Distribution		$40,257,002.73

Distributions from Domestic Receipts to Members and Monies set aside for payments to Foreign Societies

April	$ 9,301,307.87	
July	9,867,423.43	
October	10,634,295.78	
December	10,501,175.17	
		$40,304,202.25

CERTIFICATE

We have made an audit and examination of your records of revenues and disbursements as recorded on your books for the Year ended December 31, 1967. In addition to domestic receipts there was received during the year 1967 a total of $6,122,500.16 from Foreign Societies. The percentage of operation for the year 1967, based on domestic and foreign receipts is 15.88%. Our examination was made in accordance with generally accepted auditing standards and accordingly included such tests of the accompanying records and such other auditing procedures as we considered necessary in the circumstances.

In our opinion, the accompanying Statement of Domestic Revenues, Expenses and Distributions and the amount received from Foreign Societies is true and correct for 1967, and is in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding year.

Respectfully submitted,

JOYCE, MATTIS & JOHNSON

SCHEDULE "A"

SALARIES:			
Home Office:			
Distribution	$1,472,523.74		
Broadcast Auditing and Accounting	888,496.38		
Licensing and Collections	529,803.82		
Legal	274,706.05		
Executive and General	567,556.95	$3,733,096.94	
Branch Offices		913,987.74	$4,647,074.68
EXPENSES:			
Home Office:			
Rent and Electric	302,769.02		
Furniture and Fixtures	48,808.83		
Alteration Expense	384.30		
Building Service and Maintenance	23,418.34		
Telephone and Telegraph	59,078.45		
Postage	66,811.24		
Printing, Stationery and Microfilming	128,096.21		
Distribution (Index, Program, Royalty and Data Processing)	435,207.38		
Broadcast Auditing and Accounting	294,738.76		
Auditing - Joyce, Mattis & Johnson	34,448.00		
Licensing and Collections	211,589.76		
Legal	127,944.13		
Advertising and Publicity	140,881.98		
Dues and Subscriptions	19,485.64		
Memorial Funds	27,636.70		
Nathan Burkan Memorial Competition	24,285.58		
Traveling & Special Membership Meetings	29,125.82		
Committee Fees and Expenses	12,769.53		
Directors Fees and Expenses	34,623.16		
Employees Pension Trust, Group Insurance, and Hospitalization	211,816.63		
Taxes - Federal, State and City	275,912.97		
Miscellaneous	76,661.29		
Relief	236,844.63	2,824,138.35	
Branch Offices			
Rent	80,143.36		
Investigation	627,694.36		
Legal	205,346.31		
Furniture, Fixtures and Autos	93,350.38		
Miscellaneous (General Office Expenses, Taxes, etc.)	280,828.54	1,287,362.95	
			4,111,501.30
			$8,758,576.98

AREA CODE 212 580-0000

CABLE ADDRESS: ASCAP, NEW YORK

E 279

AMERICAN SOCIETY OF COMPOSERS, AUTHORS AND PUBLISHERS
575 MADISON AVENUE
NEW YORK, N. Y. 10022

STANLEY ADAMS
PRESIDENT

1968

April 2, 1969
No. . . 10017

Dear Member:

As you are aware, we usually take the opportunity afforded by the general membership meetings to bring you up to date on the financial and other affairs of the Society. However, since many of the members are unable to attend because of other commitments and the distances involved, we are forwarding each of you the enclosed report.

The report, prepared by an independent auditing firm, is the Society's financial statement for the year ended December 31, 1968, showing "Domestic Receipts, Expenses and Distributions". As stated in the auditors' report, the percentage of operation for 1968, based on domestic and foreign receipts, was 15.94%. At the close of the year, there were 10,371 writer members and 3,447 publisher members.

Cordially yours,

Stanley Adams

STANLEY ADAMS,
President.

SA:R
Att.

CERTIFICATE

We have made an audit and examination of your records of revenues and disbursements as recorded on your books for the year ended December 31, 1968. In addition to domestic receipts there was received during the year 1968 a total of $7,763,094.36 from Foreign Societies. The percentage of operation for the year 1968, based on domestic and foreign receipts is 15.94%. Our examination was made in accordance with generally accepted auditing standards and accordingly included such tests of the accompanying records and such other auditing procedures as we considered necessary in the circumstances.

In our opinion, the accompanying Statement of Domestic Revenues, Expenses and Distributions and the amount received from Foreign Societies is true and correct for 1968, and is in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding year.

Respectfully submitted,

JOYCE, MATTIS & JOHNSON

DOMESTIC RECEIPTS, EXPENSES AND DISTRIBUTIONS FOR YEAR ENDED DECEMBER 31, 1968

Domestic Receipts:		
From Licenses	$50,174,417.24	
From Interest on Investments	969,357.79	
From Membership Dues	195,038.52	
		$51,338,813.55
Expenses (As Per Schedule "A")		9,421,464.16
Balance Available for Distribution		$41,917,349.39
Distributions from Domestic Receipts to Members and Companies set aside for payments to Foreign Societies		
April	$ 9,325,533.48	
July	10,150,553.95	
October	10,867,[illegible]9.51	
December	11,558,335.65	
		$41,901,702.59

SCHEDULE "A"

SALARIES:			
Home Office:			
Distribution	$1,641,114.13		
Broadcast Auditing and Accounting	940,103.49		
Licensing and Collections	584,231.27		
Legal	317,946.26		
Executive and General	639,533.92	$4,122,929.07	
Branch Offices		980,434.15	
			$5,103,363.22
EXPENSES:			
Home Office:			
Distribution	491,150.63		
Broadcast Auditing and Accounting	327,312.17		
Licensing and Collections	241,211.47		
Legal.	99,311.10		
Rent and Electric	320,140.80		
Furniture and Fixtures	40,448.07		
Alteration Expense	22,330.69		
Building Services and Maintenance	25,304.26		
Telephone and Telegraph	54,353.21		
Postage	71,522.52		
Printing, Stationery and Microfilming	109,504.32		
Auditing - Joyce, Mattis & Johnson	31,000.00		
Advertising and Publicity	199,414.73		
Membership Representatives	25,518.57		
Dues and Subscriptions	35,429.11		
Nathan Burkan Memorial Competition	26,866.98		
Membership Meetings	31,467.82		
Committee Fees and Expenses	11,924.51		
Directors Fees and Expenses	34,883.69		
Employees Pension Trust, Group Insurance, and Hospitalization	208,149.58		
Taxes - Federal, State and City	276,912.56		
Miscellaneous	72,983.91		
Relief	230,227.97		
		2,987,368.67	
Branch Office (22 Offices):			
Rent	86,993.34		
Investigation	635,921.42		
Legal	206,777.20		
Furniture, Fixtures and Autos	89,415.01		
Miscellaneous (General Office Expenses, Taxes, etc.)	311,625.30		
		1,330,732.27	
			4,318,100.94
			$9,471,464.16

AREA CODE 212 586-8700

CABLE ADDRESS: ASCAP, NEW YORK

E 282

AMERICAN SOCIETY OF COMPOSERS, AUTHORS AND PUBLISHERS
575 MADISON AVENUE
NEW YORK, N. Y. 10022

STANLEY ADAMS
PRESIDENT

1969

April 9, 1970
No. . . 10135

Dear Member:

As you are aware, we usually take the opportunity afforded by the general membership meetings to bring you up to date on the financial and other affairs of the Society. However, since many of the members are unable to attend because of other commitments and the distances involved, we are forwarding each of you the enclosed report.

The report, prepared by an independent auditing firm, is the Society's financial statement for the year ended December 31, 1969, showing "Domestic Receipts, Expenses and Distributions". Upon the conclusion of the local television station rate proceedings in 1969, the Society refunded and placed in escrow for future refunds excess license fees paid by local television stations for the years 1964 through 1968.

As stated in the auditors' report, the percentage of operation for 1969, based on domestic and foreign receipts, was 15.86%. At the close of the year, there were 11,428 writer members and 3,822 publisher members.

Cordially yours,

Stanley Adams

STANLEY ADAMS,
President.

SA:R
Att.

CERTIFICATE

We have made an audit and examination of your records of revenues and disbursements as recorded on your books for the year ended December 31, 1969. In addition to domestic receipts there was received during the year 1969 a total of $7,631,759.14 from Foreign Societies. The percentage of operation for the year 1969, based on domestic and foreign receipts is 15.86%. Our examination was made in accordance with generally accepted auditing standards and accordingly included such tests of the accompanying records and such other auditing procedures as we considered necessary in the circumstances.

In our opinion, the accompanying Statement of Domestic Revenues, Expenses and Distributions and the amount received from Foreign Societies is true and correct for 1969, and is in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding year.

Respectfully submitted,

JOYCE, MATTIS & JOHNSON

DOMESTIC RECEIPTS, EXPENSES AND DISTRIBUTIONS FOR YEAR ENDED DECEMBER 31, 1969

Domestic Receipts:		
From Licenses	$58,927,364.63	
From Interest on Investments	1,587,805.04	
From Membership Dues	196,780.48	
		$60,711,950.15
Expenses: (As Per Schedule "A")		10,842,440.16
Balance Available for Distribution		$49,869,509.99
Distribution from Domestic Receipts to Members and amounts set aside for payments to Foreign Societies.		
April	$ 9,797,513.17	
July	10,841,895.78	
October	11,365,167.16	
December	12,955,943.50	
	44,960,519.61	
Amounts refunded and placed in escrow for excess license fees paid by local television stations applicable to years 1964 through 1968.	5,082,829.68	
		$50,043,349.29

SCHEDULE "A"

SALARIES:

Home Office:		
Distribution	$1,840,764.86	
Broadcast Auditing & Accounting	1,005,346.50	
Licensing and Collections	631,960.22	
Legal	352,772.49	
Executive and General	780,423.94	$4,611,218.01
Branch Offices		1,095,712.07
		$ 5,706,930.08

EXPENSES:

Home Office:		
Distribution	536,026.72	
Broadcast Auditing and Accounting	335,869.73	
Licensing and Collections	275,176.73	
Legal	150,558.92	
Rent and Electric	338,432.75	
Furniture and Fixtures	157,734.75	
Alteration Expenses	1,115.00	
Building Services and Maintenance	30,834.94	
Telephone and Telegraph	62,274.92	
Postage	76,104.27	
Printing, Stationery and Microfilming	121,507.02	
Auditing - Joyce, Mattis & Johnson	36,642.50	
Advertising and Publicity	275,575.50	
Membership Representatives	90,764.87	
Dues and Subscriptions	48,292.58	
Nathan Burkan Memorial Competition	17,469.46	
Membership Meetings	33,036.60	
Committee Fees and Expenses	11,741.86	
Directors' Fees and Expenses	35,009.08	
Employees' Pension Trust, Group Insurance, and Hospitalization	251,744.04	
Taxes: Federal, State and City	281,542.12	
Copyright Revision	121,533.35	
Miscellaneous	113,777.80	
Relief	217,575.89	
		3,620,421.40
Branch Office (22 Offices)		
Rent	89,803.83	
Investigation	705,915.75	
Legal	269,660.35	
Furniture, Fixture and Auto	113,644.44	
Miscellaneous (General Office Expenses, Taxes, etc.)	336,064.31	
		1,515,088.68
		5,135,510.08
		$10,842,440.16

CBS v. ASCAP

CX 2, Exhibit No. 14

Standard forms of ASCAP license agreements, currently in effect:

Title	Form No.
Local Station Blanket Radio License	5M-11-69-U
Local Station Per Program Radio License	7500-9-67
Local Station Blanket Television License Agreement	--
Local Station Per Program Television License Agreement	--

LOCAL STATION BLANKET RADIO LICENSE

E 286

Agreement made between AMERICAN SOCIETY OF COMPOSERS, AUTHORS AND PUBLISHERS (herein referred to as "SOCIETY") and

(herein referred to as "LICENSEE") as follows:

1. SOCIETY grants to LICENSEE and LICENSEE accepts for a period commencing as of and ending in accordance with the attached letter agreement, a license to perform publicly by radio broadcasting on LICENSEE'S local radio programs from Radio Station located at

(herein referred to as "the Station") non-dramatic performances of the separate musical compositions heretofore copyrighted, composed or written by members of SOCIETY and now or hereafter during the term hereof in the repertory of SOCIETY, or hereafter during the term hereof copyrighted, composed or written by members of SOCIETY, or of which SOCIETY shall have the right to license such performing rights. This license does not extend to or include the public performance by radio broadcasting or otherwise of any rendition or performance of any opera, operetta, musical comedy, play or like production, as such, in whole or in part. Nothing herein contained shall be construed as authorizing LICENSEE to grant to others any right to reproduce or perform publicly for profit by any means, method or process whatsoever, any of the musical compositions licensed hereunder or as authorizing any receiver of any radio broadcast to perform publicly or reproduce the same for profit, by any means, method or process whatsoever.

2. A. "Local radio program" as used in this agreement shall be deemed to mean any program broadcast from the Station other than a network radio program. The performances licensed hereunder may originate at the Station or at any other place whether or not such other place is licensed to perform publicly for profit the compositions licensed hereunder, regardless of the manner, means, or method of such origination; but nothing herein contained shall be deemed to grant a license to such place itself (or to the parties responsible for the performance therein) for the public performance for profit in such place of any such compositions.

B. "Network radio program" as used in this agreement shall be deemed to mean a program broadcast simultaneously or by so-called "delayed" or "repeat" broadcasts (sometimes known as "rebroadcasts") over two or more affiliated stations.

C. "Affiliated station" as used in this agreement shall be deemed to mean any radio broadcasting station in the United States which regularly broadcasts network radio programs of a radio network or which appears on the radio rate cards of such network and which is interconnected with such network by wire or any other means whatsoever. Such station shall only be deemed to be an affiliated station so long as it regularly broadcasts such programs or appears on such rate cards, as the case may be. All radio broadcasting stations in the United States which are owned and operated by a network and which broadcast such network's radio programs shall be deemed to be affiliated stations for the purposes of this agreement, whether or not they appear on such network's radio rate cards.

3. LICENSEE agrees to furnish to SOCIETY upon request during the term of this agreement a list of all musical compositions (or, at the option of LICENSEE, a list of all musical compositions licensed hereunder) broadcast from or through the Station on LICENSEE'S local radio programs, showing the title of each composition and the composer and author thereof; provided that LICENSEE shall not be obligated under this paragraph to furnish such a list covering a period or periods in the aggregate in excess of three months during any one calendar year.

4. A. The members of SOCIETY shall have the right, at any time and from time to time, in good faith, to restrict the radio broadcasting of compositions from musical comedies, operas, operettas and motion pictures, or any other composition being excessively broadcast, only for the purpose of preventing harmful effect upon such musical comedies, operas, operettas, motion pictures or compositions, in respect of other interests under the copyrights thereof; provided, however, that the maximum number of compositions which may be at any time thus restricted shall not exceed 500 and moreover that limited licenses will be granted upon application to SOCIETY entirely free of additional charge as to restricted compositions, if and when the copyright owners thereof are unable to show reasonable hazards to their major interests likely to result from such radio broadcasting; and provided further that such right to restrict any such composition shall not be exercised for the purpose of permitting the fixing or regulating of fees for the recording or transcribing of such composition; and provided further that in no case shall any charges, "free plugs", or other consideration be required in respect of any permission granted to perform a restricted composition; and provided further that in no event shall any composition, after the initial radio broadcast thereof, be restricted for the purpose of confining further radio broadcasts thereof to a particular artist, station, network or program.

B. SOCIETY reserves the further right, at any time and from time to time, in good faith, to restrict the radio broadcasting of any compositions, over and above the number specified in the previous paragraph, only as to which any suit has been brought or threatened on a claim that such composition infringes a composition not contained in the repertory of SOCIETY or on a claim that SOCIETY does not have the right to license the public performance of such composition by radio broadcasting.

5. A. In consideration of the license herein granted, LICENSEE agrees to pay to SOCIETY the following:

1. COMMERCIAL FEE: A sum equal to 2% of its "net receipts from sponsors after deduction".

2. SUSTAINING FEE: For each year during the term hereof,

a. 27 times the highest one-minute card rate of the Station for a single minute if it has net receipts from sponsors in excess of $150,000 per year for such year (calculated on a monthly basis at 2¼ times such rate), or,

b. 21.6 times the highest one-minute card rate of the Station for a single minute if it has net receipts from sponsors between $50,000 and $150,000 per year for such year (calculated on a monthly basis at 1.8 times such rate), or,

c. $12.00 if it has net receipts from sponsors of less than $50,000 per year for such year.

If such highest card rates change during any year, the annual sustaining fee of the Station shall be prorated accordingly. The "net receipts from sponsors" for the first year of this agreement are hereby estimated at

($). For each of the succeeding years of this agreement such net

receipts from sponsors shall be estimated on the basis of the actual net receipts from sponsors for the preceding year. Within thirty (30) days after the end of each contract year a final adjustment shall be made on the basis of actual net receipts from sponsors for such contract year. The sustaining fee for any period of less than a year at the end of the term of this agreement shall be prorated.

B. The term "net receipts from sponsors" as used in this agreement shall be deemed to mean the gross amount paid for the use of radio broadcasting facilities of the Station for LICENSEE'S local radio programs, as defined herein, less any advertising agency commission not to exceed 15% actually allowed to a recognized advertising agency not owned or controlled by LICENSEE.

C. The term "net receipts from sponsors after deduction" as used in this agreement shall be deemed to mean net receipts from sponsors, less a sales commission on the net receipts from sponsors equal to 15% of such net receipts.

D. The term "gross amount paid for the use of radio broadcasting facilities of the Station for LICENSEE'S local radio programs" as used in this agreement shall be deemed to mean all payments made (whether in money or in any other form) by or on behalf of the sponsor of each program for the use of the radio broadcasting facilities of the Station for all such local radio programs after deducting only rate card discounts, cash, quantity and/or frequency, actually allowed, and whether such payment shall have been made directly to LICENSEE or to any other persons, firms or corporations. Where merchandise, services or any thing or service of value is received in lieu of cash consideration for the use of the radio broadcasting facilities of the Station, the same shall be described and the reasonable value thereof determined and accounting made to SOCIETY upon the same basis as if a regular billing had been made by LICENSEE therefor in a sum equal to such reasonable value which in no event shall be deemed to exceed LICENSEE'S prevailing published card rate for such radio broadcasting facilities.

There shall be excluded from the "gross amount paid for the use of radio broadcasting facilities of the Station for LICENSEE'S local radio programs" all compensation with respect to any week over and above the total weekly amount indicated below, actually paid by the Station for such week to personnel whose duties primarily are acting as (a) master of ceremonies or disk jockey on musical programs, or (b) vocalist or instrumentalist engaged for a specific program, or (c) featured newscaster and news commentator, or (d) featured sportscaster, or (e) master of ceremonies on an entertainment program, or (f) announcer:

Station's Annual "Net Receipts from Sponsors"	Total Weekly Amount
Less than $ 50,000	$ 100
$ 50,000 to $ 150,000	$ 300
$150,000 to $ 300,000	$ 450
$300,000 to $ 500,000	$ 675
$500,000 to $ 750,000	$ 750
$750,000 to $1,000,000	$ 875
Over $1,000,000	$1,000

The total weekly amount for each contract year shall be based on the estimates of "net receipts from sponsors" made in accordance with Paragraph "5A2" for the sustaining fee. Within thirty (30) days after the end of each contract year, the total weekly amount for such contract year shall be adjusted on the basis of the actual "net receipts from sponsors" for such contract year.

F. Co-operative programs are programs which are furnished by a network to its affiliated stations under an arrangement permitting an affiliate to broadcast such programs on a sustaining basis or on a commercial basis under the sponsorship of a local, regional or national advertiser contracting directly with such affiliated station or its representative for the incorporation of the commercial credits of such advertiser into the program as broadcast by such affiliated station. For the purposes of this agreement only, and without prejudice to the position of SOCIETY or LICENSEE or any network of which LICENSEE is an affiliated station as to the status of co-operative programs under SOCIETY'S television broadcasting licenses, such co-operative radio programs shall be deemed to be "local radio programs" as defined herein.

G. No payment shall be required hereunder with respect to any sums received from political local radio programs of LICENSEE.

H. No payment shall be required hereunder with respect to a local commercial radio program of LICENSEE presented by transcription if a license has been granted by SOCIETY (as distinguished from its members) at the source to perform on such local commercial radio program by means of such transcription the musical compositions embodied therein.

I. If any local radio program of LICENSEE produced solely for broadcasting purposes is presented in a studio, auditorium or hall where an audience is admitted free of charge, or where the entire admittance charge is paid to an eleemosynary institution which shall request a gratuitous license from SOCIETY, no additional royalties or fees shall be charged by reason of the presence of such audience.

6. A. As to SUSTAINING FEE, LICENSEE shall on the twentieth day of each month during the term hereof pay to SOCIETY a sum equal to 1/12th of the sustaining fee payable hereunder and such payments shall be accompanied by statements setting forth the basis upon which the computation is made.

B. As to COMMERCIAL FEE, LICENSEE shall render monthly statements to SOCIETY on or before the twentieth day of each month covering the period of the preceding calendar month, on forms supplied gratis by SOCIETY, with respect to all gross amounts paid for the use of radio broadcasting facilities for LICENSEE'S local radio programs, and also showing all deductions in order to arrive at "net receipts from sponsors" and "net receipts from sponsors after deduction" as herein provided, without exception, and the percentage thereof payable to SOCIETY, which statements shall be accompanied by remittance due SOCIETY under the terms hereof.

C. Accountings and payments shall be made on a billing basis, with the right of deduction or rebate for bad accounts and discounts allowed or rebates paid. All billings made subsequent to the termination of this agreement with respect to local radio broadcasts made during the term hereof shall be accounted for by LICENSEE as and when such billings are made by LICENSEE.

D. LICENSEE shall also furnish to SOCIETY not later than twenty (20) days after the end of each contract year a statement, on forms supplied gratis by SOCIETY, with respect to all "gross amounts paid for the use of radio broadcasting facilities of the Station for LICENSEE'S local radio programs" during such year, and also showing all deductions in order to arrive at "net receipts from sponsors" for such year as herein provided without exception.

7. SOCIETY shall have the right, by its duly authorized representatives, at any time during customary business hours, to examine the books and records of account of LICENSEE only to such extent as may be necessary to verify any statement of accounting required pursuant hereto. SOCIETY shall consider all data and information coming to its attention as a result of any such examination of books and records as completely and entirely confidential.

8. Upon any breach or default by LICENSEE of any terms herein contained relating to the reports, accountings or payments required to be made by LICENSEE, SOCIETY may give LICENSEE thirty (30) days' notice in writing to cure such breach or default, and in the event that such breach or default has not been cured within said thirty (30) days, SOCIETY may then promptly terminate this license.

9. A. SOCIETY agrees to indemnify, save and hold LICENSEE, its sponsors and their advertising agencies, its and their artists, and each of them harmless, and defend LICENSEE, its sponsors and their advertising agencies, its and their artists, and each of them from and against any claim, demand or suit that may be made or brought against them or any of them with respect to performances given on LICENSEE'S local radio programs during the term hereof in accordance with this license of (a) "cleared compositions", or (b) musical compositions heretofore copyrighted, composed or written by members of SOCIETY and now or hereafter during the term hereof in the repertory of SOCIETY, or (c) musical compositions hereafter during the term hereof copyrighted, composed

or written by members of SOCIETY, or (d) musical compositions which SOCIETY shall hereafter certify in writing to LICENSEE as musical compositions copyrighted, composed or written by members of SOCIETY and included in SOCIETY'S repertory for the purposes of this agreement, or (e) musical compositions "deemed to be included in the repertory of SOCIETY" in accordance with the provisions of Sub-paragraph "C" of this Paragraph "9". In the event of the service upon LICENSEE of any notice, process, paper or pleading under which a claim, demand or action is made or begun against LICENSEE an account of any such matter as is hereinabove referred to, LICENSEE shall promptly give SOCIETY written notice thereof and simultaneously therewith deliver to SOCIETY any such notice, process, paper or pleading, or a copy thereof, and SOCIETY at its own expense shall have sole charge of the defense of any such action or proceeding. LICENSEE, however, shall have the right to engage counsel of its own, at its own expense, who may participate in the defense of any such action or proceeding and with whom counsel for SOCIETY shall cooperate. LICENSEE shall cooperate with SOCIETY in every way in the defense of any such action or proceeding, and in any appeals that may be taken from any judgments or orders entered therein, and shall execute all pleadings, bonds or other instruments, but at the sole expense of SOCIETY, that may be required in order properly to defend and resist any such action or proceeding, and prosecute any appeals taken therein. In the event of the service upon LICENSEE of any notice, process, paper or pleading under which a claim, demand or action is made or begun against LICENSEE on account of the performance on LICENSEE'S local radio programs of any musical composition (other than a "cleared composition") contained in the repertory of SOCIETY but not heretofore or hereafter during the term hereof copyrighted, composed or written by members of SOCIETY and not certified by SOCIETY as a musical composition copyrighted, composed or written by members of SOCIETY, SOCIETY agrees at the request of LICENSEE to cooperate with and assist LICENSEE in the defense of any such action or proceeding, and in any appeals that LICENSEE may elect to take from any judgments or orders entered therein.

B. As used in this Paragraph "9", a "cleared composition" shall mean any composition in the repertory of SOCIETY, not copyrighted, composed or written by a member of SOCIETY, which SOCIETY shall have notified LICENSEE is a composition with respect to which SOCIETY is willing to indemnify LICENSEE, provided that the performance of such composition shall be made on the specific local radio program of LICENSEE for which a clearance shall have been given by SOCIETY; provided further, however, that in the event that SOCIETY notifies LICENSEE in writing that it is willing to clear such a composition without limitation to a specific program, such composition shall thereafter be regarded as a "cleared composition" until such time as SOCIETY shall rescind such clearance.

C. For the purpose of this paragraph "9" only, any musical composition (other than a musical composition or group of musical compositions expressly excepted therefrom or that may be restricted because of the operation of Paragraph "4" hereof) which is listed in the bound volumes entitled "ASCAP Index 1963" as the same may have been revised heretofore or as the same may hereafter be revised, as a musical composition heretofore copyrighted by a present member of SOCIETY shall be deemed to be included in the repertory of SOCIETY. SOCIETY shall have the right to make reasonable revisions in such Index from time to time, provided, however, that no such revision and no exception referred to above shall be effective as to any broadcast of LICENSEE'S local programs made, or delayed or repeat broadcasts thereof scheduled, prior to the date on which LICENSEE shall have received notice of such revision or exception. Nothing in this Sub-paragraph "C" shall be deemed to limit LICENSEE'S rights or to limit or affect LICENSEE'S obligations to pay the license fees payable under this agreement or to limit SOCIETY'S obligations to indemnify as provided in Sub-paragraph "A" of this Paragraph "9".

D. The provisions contained in Paragraph "9" shall apply to LICENSEE'S sponsors and their advertising agencies, and its or their artists, as to LICENSEE'S local radio programs with the same effect as if in each instance there had been added to "LICENSEE" the words "its sponsors and their advertising agencies, its and their artists, and each of them".

10. SOCIETY agrees during the term hereof to maintain for the service of LICENSEE substantially SOCIETY'S present repertory of compositions copyrighted, composed or written by present members of SOCIETY. In case there shall be a substantial diminution, by reason of action by SOCIETY or any such members, in the use which LICENSEE may make of compositions copyrighted, composed or written by such members of SOCIETY as compared to the use which LICENSEE customarily has been permitted to make of such compositions prior to the actual execution of this agreement or in case there shall be a substantial diminution in SOCIETY'S present repertory of compositions copyrighted, composed or written by present members of SOCIETY, LICENSEE may give SOCIETY thirty (30) days' notice in writing to cure such substantial diminution. In the event that such substantial diminution in use or repertory has not been cured within said thirty (30) days, LICENSEE may then promptly terminate this agreement. If LICENSEE does not so terminate, LICENSEE shall have the right to obtain a reduction, as hereinafter provided, in the percentage payable on its "net receipts from sponsors after deduction" proportionate to such substantial diminution in use or repertory.

In the event that (a) such a substantial diminution in use or repertory shall have occurred and LICENSEE shall have notified SOCIETY thereof, and (b) SOCIETY shall not have cured such diminution within thirty (30) days thereafter, and (c) SOCIETY and LICENSEE shall be unable to agree within such thirty (30) days either as to the existence of such a diminution as would justify a decrease in the license fees payable hereunder or as to the appropriate reduction in the percentage payable on LICENSEE'S "net receipts from sponsors after deduction" by reason of such diminution, and (d) LICENSEE shall not have terminated this agreement as herein provided, the controversy shall be determined by arbitration as herein provided.

In the event that such a substantial diminution in use or repertory shall have been determined to exist as herein provided and thereafter SOCIETY shall have cured such diminution, SOCIETY shall have the right to obtain, as herein provided, the restoration of any reduction theretofore made in the license fees payable under this agreement by reason of such diminution. In the event that SOCIETY shall notify LICENSEE that in SOCIETY'S opinion any substantial diminution in use or repertory shall have been cured and within thirty (30) days thereafter SOCIETY and LICENSEE shall be unable to agree as to whether or not such diminution shall have been cured, the controversy shall be determined by arbitration as herein provided.

Any award of the arbitrators with respect to any controversy submitted to arbitration under this Paragraph "10" and reducing or restoring the percentage payable by LICENSEE hereunder shall be effective as of whichever shall be the later of (a) the date on which LICENSEE or SOCIETY, as the case may be, shall have given the other notice of such substantial diminution in use or repertory or the curing thereof, or (b) the date, if any, which the arbitrators shall specify as the date on which such diminution occurred or was cured.

In case any controversy is to be determined by arbitration as provided above, such arbitration shall be conducted under and pursuant to the laws of the State of New York, in accordance with the provisions of Paragraph "11" hereof.

In case the arbitrators shall determine that there has been such a substantial diminution in use or repertory and shall make an award reducing the percentage payable by LICENSEE on its "net receipts from sponsors after deduction", the reduction in such percentage payable by LICENSEE made by such award shall in no event be greater than the participation in such percentage payments of the publisher member or members of SOCIETY whose catalogue or catalogues shall have been the subject of such substantial diminution in use or repertory. The participation of such publisher member or members in such percentage payments made by LICENSEE hereunder shall be deemed to be the same percentage of such payments by LICENSEE as the percentage which such publisher member's or members' income from SOCIETY in respect of radio distribution for the year immediately preceding shall bear to the entire distribution of royalties in respect of radio by SOCIETY to all of its publisher members during such year.

11. In the event that during the term of this agreement there is to be determined by arbitration hereunder whether there has been such a substantial diminution in use or repertory and, if so, the percentage by which the license fees payable hereunder shall be reduced by reason thereof, or whether a substantial diminution has been cured, as the case may be, as provided in Paragraph "10", each party shall on written notice to the other appoint an arbitrator within two (2) weeks after the expiration of the applicable thirty (30) day period specified in Paragraph "10" hereof.

In the event that within ten (10) days after the giving of such notice by one party, the other shall not by written notice appoint another arbitrator, then upon the written request of either party (or both) the person who is, at the time performing the functions of President of the American Arbitration Association shall appoint the second arbitrator. When two arbitrators have been appointed they shall, if possible, agree upon a third arbitrator and shall appoint him by notice in writing, in triplicate, signed by both of them, one of which triplicate notices shall be given to each party hereto. If ten (10) days shall elapse after the appointment of the second arbitrator

without notice of the appointment of the third arbitrator having been given, then upon the written request of either party (or both) the person who is at the time performing the functions of President of the American Arbitration Association shall appoint the third arbitrator. Upon appointment of the third arbitrator the three arbitrators shall hold a hearing and give opportunity to each party hereto to present his case in the presence of the other, and shall then make their award determining the license fees which shall be paid by LICENSEE to SOCIETY, taking into consideration all applicable factors which tend to determine whether there has been such a substantial diminution and, if so, the extent thereof and the percentage by which the license fees payable hereunder shall be reduced by reason thereof, or whether a substantial diminution has been cured, as the case may be, as provided in Paragraph "10". The arbitration shall be conducted in accordance with the rules of the American Arbitration Association then in effect.

The award of the majority of the arbitrators shall be binding upon the parties hereto, judgment may be entered thereon in any court having jurisdiction, and this agreement shall be deemed to be modified accordingly. Such award shall include the fixing of the expenses of the arbitration, which shall be borne equally by both parties.

12. In the event of the termination or suspension of the governmental licenses covering the Station or any substantial alteration or variation of the terms and conditions thereof, or any major interference with the operations of the Station due to governmental measures or restrictions, LICENSEE shall have the right to terminate this agreement upon seven (7) days' written notice.

13. In the event of:

(a) any major interference with the operation of SOCIETY in the state, territory, dependency, possession or political subdivision in which the Station is located, by reason of any law of such state, territory, dependency, possession or political subdivision; or

(b) any substantial increase in the cost to the SOCIETY of operating in such state, territory, dependency, possession or political subdivision, by reason of any law of such state, territory, dependency, possession or political subdivision, which is applicable to the licensing of performing rights,

SOCIETY shall have the right to terminate this agreement on thirty (30) days' written notice to LICENSEE.

14. All notices required or permitted to be given by either of the parties to the other hereunder shall be duly and properly given if mailed to such other party by registered or certified United States mail addressed to such other party at its main office for the transaction of business.

15. This agreement shall enure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns, but no assignment shall relieve the parties hereto of their respective obligations hereunder.

16. Attached hereto is a form of "local station per program radio license". By giving SOCIETY written notice thereof at least ninety (90) days prior to the commencement of the third contract year hereof, LICENSEE may substitute said local station per program radio license agreement in place hereof, in which event, effective with the commencement of the third contract year hereof, said per program radio license agreement shall be in full force and effect between LICENSEE and SOCIETY for the balance of the term of this agreement.

17. Attached hereto is a copy of a letter of interpretation dated March 1, 1967, which shall be deemed a part of this agreement.

IN WITNESS WHEREOF, this agreement has been duly executed by SOCIETY and LICENSEE this

day of , 19 , as of the day of , 19 .

AMERICAN SOCIETY OF COMPOSERS,
AUTHORS AND PUBLISHERS

By .....

.....
LICENSEE

By .....

LOCAL STATION PER PROGRAM RADIO LICENSE

Agreement made between AMERICAN SOCIETY OF COMPOSERS, AUTHORS AND PUBLISHERS (herein referred to as "SOCIETY") and

(herein referred to as "LICENSEE") as follows:

1. SOCIETY grants to LICENSEE and LICENSEE accepts for a period commencing as of the date of this agreement and ending a license to publicly perform by non-visual broadcasting on LICENSEE'S local programs from Radio Station

located at

(herein referred to as "the Station"), non-dramatic renditions of the separate musical compositions heretofore copyrighted or composed by members of SOCIETY and now or hereafter during the term hereof in the repertory of SOCIETY, or hereafter during the term hereof copyrighted or composed by members of SOCIETY, or of which SOCIETY shall have the right to license such performing rights. This license does not extend to or include the public performance by broadcasting or otherwise of any rendition or performance of any opera, operetta, musical comedy, play or like production, as such, in whole or in part. Nothing herein contained shall be construed as authorizing LICENSEE to grant to others any right to reproduce or perform publicly for profit by any means, method or process whatsoever, any of the musical compositions licensed hereunder or as authorizing any receiver of any such broadcast rendition to perform publicly or reproduce the same for profit by any means, method or process whatsoever.

2. No license is hereby granted to broadcast any network programs.

"Local program" as used in this agreement shall be deemed to mean any program broadcast from the Station other than a network program.

"Local commercial program" as used in this agreement shall be deemed to mean any local program in connection with which a sponsor pays directly or indirectly for the use of the broadcasting facilities of the Station. A so-called "participating program" shall be deemed to be a commercial program.

"Local sustaining program" as used in this agreement shall be deemed to mean any local program other than a local commercial program.

"Network program" as used in this agreement shall be deemed to mean a program simultaneously broadcast over two or more radio stations interconnected by wire, radio or any other means whatsoever.

A single "delayed" or "repeat" broadcast of a network program from the Station shall be deemed to be a part of such network program.

The performances licensed hereunder may originate at the Station or at any other place whether or not such other place is licensed to perform publicly for profit the compositions licensed hereunder and regardless of the manner, means or method of such origination; but nothing herein contained shall be deemed to grant a license to any such other place itself (or to the parties responsible for the performance therein) for the public performance for profit in such other place of any such compositions.

3. SOCIETY reserves the right at any time and from time to time, in good faith, to restrict the broadcasting of compositions from musical comedies, operas, operettas and motion pictures or any other composition being excessively broadcast, only for the purpose of preventing harmful effect upon such musical comedies, operas, operettas, motion pictures or compositions, in respect of other interests under the copyrights thereof; provided, however, that the maximum number of compositions which may be at any time thus restricted shall not exceed five hundred and moreover that limited licenses will be granted upon application entirely free of additional charge as to restricted compositions, if and when the copyright owners thereof are unable to show reasonable hazards to their major interests likely to result from such broadcasting; and provided, further, that SOCIETY shall not exercise such right to restrict any such composition for the purpose of permitting the fixing or regulating of fees for the recording or transcribing of such composition; and provided, further, that in no case shall any charges, "free plugs" or other consideration be required in respect of any permission granted to perform a restricted composition; and provided, further, that in no event shall any composition, after the initial broadcast thereof, be restricted for the purpose of confining further broadcasts thereof to a particular artist, station, network or program.

SOCIETY reserves the further right, at any time and from time to time, in good faith, to restrict the broadcasting of any compositions, over and above the number specified in the previous paragraph, only as to which any suit has been brought or threatened on a claim that such composition infringes a composition not contained in SOCIETY'S repertory or on a claim that SOCIETY does not have the right to license the performing rights in such composition.

4. In consideration of the license herein granted, LICENSEE agrees to pay to SOCIETY the following:

A. COMMERCIAL FEE: (1) 8% of its "net receipts from sponsors after deduction" on local commercial programs which use any of the compositions licensed hereunder except those programs making only incidental use of any of the compositions licensed hereunder, as provided in subdivision "(2)" of this paragraph.

(2) 2% of the "net receipts from sponsors after deduction" on local commercial programs which use any of the compositions licensed hereunder only incidentally in such programs in the following manner: as bridge or background music, themes or signatures, arrangements of works in the public domain, or incidental to the broadcast of a public or sports event.

B. SUSTAINING FEE: For each of its local sustaining programs of which any or all of the musical content shall include, in whole or in part, any musical composition licensed hereunder, an amount equal to 1% of the Station's published full card rate applicable to a single local commercial program for the time when such sustaining program shall be broadcast, subject to the following deductions:

(1) rate card discounts, if any, which would normally be actually allowed to sponsors for such period of time;

(2) advertising agency commission not to exceed 15% if normally actually allowed to recognized advertising agencies not owned or controlled by LICENSEE;

(3) a sales commission equal to 15% of the amount remaining after items "(1)" and "(2)" of this Subparagraph "B" are deducted therefrom;

provided that in no event shall the license fees payable under this Subparagraph "B" be greater than the sustaining fees that would have been payable to SOCIETY had the parties executed, in place hereof, the Local Station Blanket Radio License form attached hereto.

The term "net receipts from sponsors" shall be deemed to mean the gross amount paid for the use of the broadcasting facilities of the Station for LICENSEE'S local commercial programs, as defined herein, less any advertising agency commission not to exceed 15% actually allowed to a recognized advertising agency not owned or controlled by LICENSEE.

The term "net receipts from sponsors after deduction" shall be deemed to mean net receipts from sponsors less a sales commission on the net receipts from sponsors equal to 15% of such net receipts.

"Gross amount paid for the use of the broadcasting facilities of the Station for LICENSEE'S local commercial programs" shall be deemed to mean all payments made (whether in money or in any other form) by or on behalf of the sponsor of each program for the use of the broadcasting facilities of the Station for local commercial programs after deducting only rate card discounts, quantity and/or frequency, actually allowed, and whether such payment shall have been made directly to LICENSEE or to any other persons, firms or corporations. Where merchandise, services or any thing or service of value is received in lieu of cash consideration for the use of the broadcasting facilities of the Station, the same shall be described and the reasonable value thereof determined and accounting made to SOCIETY upon the same basis as if a regular billing had been made by LICENSEE therefor in a sum equal to such reasonable value which in no event shall be deemed to exceed LICENSEE'S prevailing published card rate for such broadcasting facilities.

No payment shall be required hereunder with respect to any sums received from political broadcasts.

No payment shall be required hereunder with respect to any local commercial program presented by transcription if payment for the right to perform publicly for profit has been made at the source with respect to the musical compositions embodied in such transcription program.

If any local program of LICENSEE produced solely for broadcasting purposes is presented in a studio, auditorium or hall where an audience is admitted free of charge, or where the entire admittance charge is paid to an eleemosynary institution which shall request a gratuitous license from SOCIETY, no additional royalties or fees shall be charged by reason of the presence of such audience.

5. A. LICENSEE shall furnish to Society postage prepaid on or before the 20th day of each month during the term hereof covering the period of the preceding calendar month:

(1) A copy of the complete Station log for each day in the form required by Federal Communications Commission Rules and Regulations, Part 3, Section 3.404, and,

(2) as to each local program listed on such station logs as musical or which has any musical content, statements on forms supplied gratis by SOCIETY setting forth a complete item by item list of each musical composition rendered in whole or in part during each such program, and showing with respect to each such program: (a) the date of rendition; (b) the title of the program; (c) the time rendered; (d) as to each musical composition rendered on such programs the full title thereof, the name of the composer and author, and the name of the copyright owner as imprinted on the published sheet of music or orchestration, it being understood that titles may not be abbreviated but must be shown in full; (e) the name of each sponsor and as to each such sponsor the gross amount paid for the use of the broadcasting facilities of the Station for LICENSEE'S local commercial programs, and also showing all deductions in order to arrive at "net receipts from sponsors" and "net receipts from sponsors after deduction" as herein provided, without exception, and the percentage thereof payable to SOCIETY; and (f) the regular published full card rate of the Station applicable to the time when each local sustaining program was broadcast and all deductions applicable thereto.

The foregoing requirements apply to all local programs without exception and regardless of the origination of the program. Said statements shall be rendered under oath and accompanied by remittance due SOCIETY under the terms hereof.

B. Where renditions are made by means of phonograph records or electrical transcriptions the requirement of subdivision "(d)" of Paragraph "5A (2)" shall be deemed to have been complied with by LICENSEE furnishing the full title of each musical composition and such other information in full, as is shown on the label of the phonograph record or electrical transcription from which such renditions are made, as to the composer, author and publisher of such composition, together with the name and brand of the manufacturer and the serial number of the phonograph record or electrical transcription.

C. Any failure of LICENSEE to comply with the requirements set out in this Paragraph "5" as to the complete identification of compositions performed on local programs, shall create the presumption that the music and/or compositions used were compositions in the repertory of SOCIETY. Anything to the contrary herein notwithstanding, this license shall not extend to or include compositions wholly unreported in such statements.

D. Accountings and payments shall be made on a billing basis with a right of deduction or rebate for bad accounts and discounts allowed or rebates paid. All billings made subsequent to the termination of this agreement with respect to broadcasts made during the term hereof shall be accounted for by LICENSEE as and when such billings are made by LICENSEE.

6. SOCIETY shall have the right, by its duly authorized representatives, at any time during customary business hours to examine the books and records of account (including logs and all other records relating to the music and/or compositions performed on local programs of the Station) of LICENSEE only to such extent as may be necessary to verify any such monthly statement as may be rendered pursuant hereto. SOCIETY shall consider all data and information coming to its attention as a result of any such examination of books and records as completely and entirely confidential.

7. Upon any breach or default by LICENSEE of any terms herein contained relating to the reports, accountings or payments required to be made by LICENSEE, SOCIETY may give LICENSEE thirty (30) days' notice in writing to cure such breach or default, and in the event that such breach or default has not been cured within said thirty (30) days, SOCIETY may then promptly terminate this license.

8. A. SOCIETY agrees to indemnify, save and hold LICENSEE, its sponsors and their advertising agencies, its and their artists, and each of them harmless, and defend LICENSEE, its sponsors and their advertising agencies, its and their artists, and each of them from and against any claim, demand or suit that may be made or brought against them or any of them with respect to renditions given on LICENSEE'S local programs during the term hereof in accordance with this license of "cleared compositions," or of musical compositions heretofore copyrighted or composed by members of SOCIETY and now or hereafter during the term hereof in SOCIETY'S repertory, or hereafter during the term hereof copyrighted or composed by present members of SOCIETY or by future members of SOCIETY so long as such future members shall be members of SOCIETY. In the event of the service upon LICENSEE of any notice, process, paper or pleading under which a claim, demand or action is made or begun against LICENSEE on account of any such matter as is hereinabove referred to, LICENSEE shall promptly give SOCIETY written notice thereof and simultaneously therewith deliver to SOCIETY any such notice, process, paper or pleading, or a copy thereof, and SOCIETY at its own expense shall have sole charge of the defense of any such action or proceeding. LICENSEE, however, shall have the right to engage counsel of its own, at its own expense, who may participate in the defense of any such action or proceeding and with whom counsel for SOCIETY shall cooperate. LICENSEE shall cooperate with SOCIETY in every way in the defense of any such action or proceeding, and in any appeals that may be taken from any judgments or orders entered therein, and shall execute all pleadings, bonds or other instruments, but at the sole expense of SOCIETY, that may be required in order properly to defend and resist any such action or proceeding, and prosecute any appeals taken therein. In the event of the service upon LICENSEE of any notice, process, paper or pleading under which a claim, demand or action is made, or begun against LICENSEE on account of the rendition on LICENSEE'S local programs of any musical composition (other than a "cleared composition") contained in SOCIETY'S repertory but not heretofore or hereafter during the term hereof copyrighted or composed by members of SOCIETY, SOCIETY agrees at the request of LICENSEE to cooperate with and assist LICENSEE in the defense

of any such action or proceeding, and in any appeals that LICENSEE may elect to take from any judgments or orders entered therein.

B. As used in this Paragraph "8" a "cleared composition" shall mean any composition, in SOCIETY'S repertory, not copyrighted or composed by a member of SOCIETY, which SOCIETY shall have notified LICENSEE is a composition with respect to which SOCIETY is willing to indemnify LICENSEE, provided that the rendition of such composition shall be made on the specific local program of LICENSEE for which a clearance shall have been given by SOCIETY.

C. For the purposes of this Paragraph "8" only, any musical composition (other than a musical composition or group of musical compositions expressly excepted therefrom or that may be restricted because of the operation of Paragraph "3" hereof) heretofore copyrighted by a present member of SOCIETY shall be deemed to be included in SOCIETY'S repertory if such musical composition is designated in SOCIETY'S Index of Compositions heretofore made available to stations, as the same may be revised as required or permitted by this sub-paragraph "C", as a musical composition the non-dramatic performing rights in which are controlled by SOCIETY. SOCIETY will make available to LICENSEE as soon as possible, but in any event within one year from the date of this agreement (a) such additions to such Index as have been compiled by SOCIETY since the distribution to the stations of the last instalment of such Index in so far as such additions relate to musical compositions copyrighted by members of SOCIETY and the non-dramatic rights in which are now controlled by SOCIETY together with (b) such other additions as shall be necessary to reflect in such Index the musical compositions which have been copyrighted by SOCIETY'S members subsequent to January 1, 1939, and prior to the date of this agreement and which shall be in SOCIETY'S repertory at the date of this agreement. SOCIETY shall have the right to make reasonable revisions in such Index from time to time, provided, however, that no such revision and no exception referred to above shall be effective as to any broadcast of LICENSEE'S local programs prior to the date on which LICENSEE shall have received notice of such revision or exception. Nothing in this sub-paragraph "C" shall be deemed to limit LICENSEE'S rights or to limit or affect LICENSEE'S obligations to pay the license fees payable under this agreement or to limit SOCIETY'S obligations to indemnify as provided in sub-paragraph "A" of this paragraph.

D. The provisions contained in sub-paragraphs "A" and "B" of this Paragraph "8" shall apply to LICENSEE'S sponsors and their advertising agencies, and its or their artists, as to LICENSEE'S local programs with the same effect as if in each instance there had been added to "LICENSEE" the words "its sponsors and their advertising agencies, its and their artists, and each of them."

9. SOCIETY agrees during the term hereof to maintain for the service of LICENSEE substantially SOCIETY'S present repertory of compositions copyrighted or composed by members of SOCIETY. In case there shall be a substantial diminution, by reason of action by SOCIETY or any of its members, in the use which LICENSEE may make of compositions copyrighted or composed by members of SOCIETY as compared to the use which LICENSEE customarily has been permitted to make of such compositions in the past, or in case there shall be a substantial diminution in SOCIETY'S present repertory of compositions copyrighted or composed by members of SOCIETY, LICENSEE may give SOCIETY thirty (30) days' notice in writing to cure such substantial diminution. In the event that such substantial diminution in use or repertory has not been cured within said thirty (30) days, LICENSEE may then promptly terminate this agreement. If LICENSEE does not so terminate, LICENSEE shall have the right to obtain a reduction, as hereinafter provided, in the percentage payable on its "net receipts from sponsors after deduction" and on its applicable "published full card rates" after deductions, proportionate to such substantial diminution in use or repertory.

In the event that (a) such a substantial diminution in use or repertory shall have occurred and LICENSEE shall have notified SOCIETY thereof, and (b) SOCIETY shall not have cured such diminution within thirty (30) days thereafter, and (c) SOCIETY and LICENSEE shall be unable to agree, within such thirty (30) days, either as to the existence of such a diminution as would justify a decrease in the license fees payable hereunder or as to the appropriate reduction in the percentage payable on LICENSEE'S "net receipts from sponsors after deduction" and on LICENSEE'S applicable "published full card rates" after deductions by reason of such diminution, and (d) LICENSEE shall not have terminated this agreement as herein provided, the controversy shall be determined by arbitration as herein provided.

In the event that such a substantial diminution in use or repertory shall have been determined to exist as hereinprovided, and thereafter SOCIETY shall have cured such diminution, SOCIETY shall have the right to obtain, as herein provided, the restoration of any reduction theretofore made in the license fees payable under this agreement by reason of such diminution. In the event that SOCIETY shall notify LICENSEE that in SOCIETY'S opinion any substantial diminution in use or repertory shall have been cured and within thirty (30) days thereafter SOCIETY and LICENSEE shall be unable to agree as to whether or not such diminution shall have been cured, the controversy shall be determined by arbitration as herein provided.

Any award of the arbitrators with respect to any controversy submitted to arbitration under this Paragraph "9" and reducing or restoring the percentage payable by LICENSEE hereunder, shall be effective as of whichever shall be the later of (a) the date on which LICENSEE or SOCIETY, as the case may be, shall have given the other notice of such substantial diminution of use or repertory or the curing thereof or (b) the date, if any, which the arbitrators shall specify as the date on which such diminution occurred or was cured.

In case any controversy is to be determined by arbitration as provided above, such arbitration shall be conducted under and pursuant to the laws of the State of New York in accordance with the provisions of Paragraph "10" hereof, and each party shall on written notice to the other appoint an arbitrator within two (2) weeks after the expiration of the applicable thirty (30) day period specified above.

In case the arbitrators shall determine that there has been such a substantial diminution in use or repertory and shall make an award reducing the percentage payable by LICENSEE on its "net receipts from sponsors after deduction" and on its applicable "published full card rates" after deductions, the reduction in such percentage payable by LICENSEE made by such award shall in no event be greater than the participation in such percentage payments of the publisher member or members of SOCIETY whose catalogue or catalogues shall have been the subject of such substantial diminution in use or repertory. The participation of such publisher member or members in such percentage payments made by LICENSEE hereunder shall be deemed to be the same percentage of such payments by LICENSEE as the percentage which such publisher member's or members' income from SOCIETY in respect of radio distribution for the year immediately preceding shall bear to the entire distribution of royalties in respect of radio by SOCIETY to all of its publisher members during such year.

10. In the event that during the term of this agreement there is to be determined by arbitration hereunder whether there has been such a substantial diminution in use or repertory and, if so, the percentage by which the license fees payable hereunder shall be reduced by reason thereof, or whether a substantial diminution has been cured, as the case may be, as provided in Paragraph "9", each party on written notice to the other appoint an arbitrator within the time limit specified in Paragraph "9".

In the event that within ten (10) days after the giving of such notice by one party, the other shall not by written notice appoint another arbitrator, then the arbitrator first appointed shall be the sole arbitrator. When two arbitrators have been appointed they shall, if possible, agree upon a third arbitrator and shall appoint him by notice in writing, in triplicate, signed by both of them, one of which triplicate notices shall be given to each party hereto. If ten (10) days shall elapse after the appointment of the second arbitrator, without notice of the appointment of the third arbitrator having been given, then either party (or both) may in writing request the person who is at the time President of the American Arbitration Association to appoint the third arbitrator. Upon appointment of the third arbitrator the three arbitrators shall hold a hearing (or if the first arbitrator is the sole arbitrator he shall hold a hearing) and give opportunity to each party hereto to present his case in the presence of the other, and shall then make their (or his) award determining the license fees which shall be paid by LICENSEE to SOCIETY during such original or additional term, taking into consideration all applicable factors which tend to determine whether there has been such a substantial diminution and, if so, the extent thereof and the percentage by which the license fees payable hereunder shall be reduced by reason thereof, or whether a substantial diminution has been cured, as the case may be, as provided in Paragraph "9". The arbitration shall be conducted in accordance with the rules of the American Arbitration Association then in effect.

The award of the majority of the arbitrators (or if the first arbitrator is the sole arbitrator his award) shall be binding upon the parties hereto, judgment may be entered thereon in any Court having jurisdiction, and this agreement

shall be deemed to be modified accordingly. Such award shall include the fixing of the expenses of the arbitration, which shall be borne equally by both parties.

11. In the event of the termination or suspension of the governmental licenses covering the Station or any substantial alteration or variation of the terms and conditions thereof, or any major interference with the operation of the Station due to governmental measures or restrictions, LICENSEE shall have the right to terminate this agreement upon thirty (30) days' written notice, such termination to be effective as of the date when such interference with or alteration of the normal operations shall occur.

12. In the event of any major interference with the operation of SOCIETY in the state, territory, dependency, possession or political subdivision in which the Station is located, by reason of any law of such state, territory, dependency, possession or political subdivision, SOCIETY shall have the right to terminate this agreement on thirty (30) days' written notice to LICENSEE.

13. All notices required or permitted to be given by either of the parties to the other hereunder shall be duly and properly given if mailed to such other party by registered United States mail addressed to such other party at its main office for the transaction of business.

14. This agreement shall enure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns, but no assignment shall relieve the parties hereto of their respective obligations hereunder.

15. Attached hereto is a form of "local station blanket radio license." By giving SOCIETY written notice thereof at least ninety (90) days prior to the commencement of the third contract year hereof, LICENSEE may substitute said local station blanket radio license agreement in place hereof, in which event, effective with the commencement of the third contract year hereof, said blanket radio license agreement shall be in full force and effect between LICENSEE and SOCIETY for the balance of the term of this agreement.

IN WITNESS WHEREOF, this agreement has been duly executed by SOCIETY and LICENSEE and their respective seals hereto attached as of the day of , 19 .

AMERICAN SOCIETY OF COMPOSERS,
AUTHORS AND PUBLISHERS

By.....

.....
LICENSEE

By.....

E 294

AMERICAN SOCIETY OF
COMPOSERS, AUTHORS AND PUBLISHERS

LOCAL STATION BLANKET TELEVISION LICENSE AGREEMENT

Licensee: _____

Station: _____

Location: _____

_____

AGREEMENT made between AMERICAN SOCIETY OF COMPOSERS, AUTHORS AND PUBLISHERS (herein referred to as "SOCIETY") and (herein referred to as "LICENSEE") as follows:

1A. SOCIETY grants to LICENSEE and LICENSEE accepts for a period commencing as of January 1, 1968 and ending December 31, 1973, a license to perform publicly by television broadcasting on LICENSEE's local television programs from television station located at (herein referred to as "the station") non-dramatic performances of the separate musical compositions heretofore copyrighted, composed or written by those members of SOCIETY listed in Schedule A attached hereto (as the same may be augmented from time to time) and now or hereafter during the term hereof in the repertory of SOCIETY, or hereafter during the term hereof copyrighted, composed or written by such members of SOCIETY, or of which SOCIETY shall have the right to license such performing rights. As additional members of SOCIETY hereafter grant to SOCIETY the right to license performances by means of television broadcasting, such additional members will be added to those listed in Schedule A as of the date upon which SOCIETY acquires such rights.

B. This license does not extend to or include the public performance by television broadcasting or otherwise of any rendition or performance of (a) any opera, operetta, musical comedy, play or like production, as such, in whole or in part, or (b) any composition from any opera, operetta, musical comedy, play or like production (whether or not such opera, operetta, musical comedy, play or like production was presented on the stage or in motion picture form) in a manner which recreates the performance of such composition with substantially such distinctive scenery or costume as was used in the presentation of such opera, operetta, musical comedy, play or like production (whether or not such opera, operetta, musical comedy, play or like production was presented on the stage or in motion picture form); provided, however, that the rights granted to LICENSEE under this agreement shall be deemed to include a grant of the right to make non-dramatic performances of compositions licensed hereunder by the television broadcasting of a motion picture containing such composi-

tions if the rights in such motion picture other than those licensed under this agreement have been obtained from the parties in interest.

Nothing herein contained shall be deemed to license the public performance by television broadcasting of dramatic performances. Any performance of a separate musical composition which is not a dramatic performance, as defined herein, shall be deemed to be a non-dramatic performance. For the purposes of this agreement, a dramatic performance shall mean a performance of a musical composition on a television program in which there is a definite plot depicted by action and where the performance of the musical composition is woven into and carries forward the plot and its accompanying action. The use of dialogue to establish a mere program format or the use of any non-dramatic device merely to introduce a performance of a composition shall not be deemed to make such performance dramatic.

The definition of the terms "dramatic" and "non-dramatic" performances contained in this subparagraph B are purely for the purposes of this agreement and for the term thereof and shall not be binding upon or prejudicial to any position taken by either of the parties subsequent to the expiration thereof or for any purpose other than this agreement.

C. Except as expressly herein otherwise provided, nothing herein contained shall be construed as authorizing LICENSEE to grant to others any right to reproduce or perform publicly for profit by any means, method or process whatsoever, any of the musical compositions licensed hereunder or as authorizing any receiver of any television broadcast to perform publicly or reproduce the same for profit, by any means, method or process whatsoever.

2A. "Local television program" as used in this agreement shall be deemed to mean a program, whether or not such program shall include visual material, broadcast from the station other than a network television program of a "regular national television network", as defined herein, or of an "occasional television network" licensed by SOCIETY (as distinguished from its members) at the source. The performances licensed hereunder may originate at the station or at any other place whether or not such other place is licensed to perform publicly for profit the compositions licensed hereunder, regardless of the manner, means, or method of such origination; but nothing herein contained shall be deemed to grant a license to such place itself (or

to the parties responsible for the performance therein) for the public performance for profit in such place of any such compositions.

B. "Network television program" as used in this agreement shall be deemed to mean a program, whether or not such program shall include visual material, broadcast simultaneously or by so-called "delayed" or "repeat" broadcasts (sometimes known as "rebroadcasts") over two or more affiliated stations.

C. "Affiliated station" as used in this agreement shall be deemed to mean any television broadcasting station in the United States which regularly broadcasts network television programs of a television network or which appears on the television rate cards of such network and which (a) is interconnected with such network by co-axial cable, wire, television relay or any other means whatsoever, or (b) pending the availability of such means of interconnecting the station with such network at an expenditure which is not unreasonable in comparison with the cost of interconnecting such network's other affiliated stations, is a party to a non-interconnected affiliation agreement with such network. Such station shall only be deemed to be an affiliated station so long as it regularly broadcasts such programs or appears on such rate cards, as the case may be. All television broadcasting stations in the United States which are owned and operated by a network and which broadcast such network's television programs shall be deemed to be affiliated stations for the purposes of this agreement, whether or not they appear on such network's television rate cards.

D. "Independent station" as used in this agreement shall be deemed to mean any television broadcasting station in the United States other than an affiliated station of a "regular national television network" as defined herein.

E. "Regular national television network" as used in this agreement shall be deemed to mean any television network which (a) has a minimum of one hundred affiliated stations and (b) supplies its affiliated stations with television programs which are broadcast by such affiliated stations on a regular basis for an average of not less than forty hours each week in any six month period during the term of this agreement.

F. "Occasional television network" as used in this agreement shall be deemed to mean any group of two or more affiliated stations which is not a regular national television network as defined herein, provided, however, that a group of two or more affiliated stations all

or substantially all of which are under common ownership or control shall not be considered to be an occasional television network.

G. "Video tapes" as used in this agreement shall be deemed to mean video tapes and any recording material that is now or may hereafter be used in place thereof.

3A. LICENSEE agrees to furnish to SOCIETY upon request during the term of this agreement a list of all musical compositions (or, at the option of LICENSEE, a list of all musical compositions licensed hereunder) broadcast from or through the station on LICENSEE's local television programs, showing the title of each composition and the composer and author thereof, and a brief notation of the scenery and costumes used, provided that LICENSEE shall not be obligated under this paragraph to furnish such a list covering a period or periods in the aggregate in excess of three months during any one calendar year.

B. At the request of SOCIETY, LICENSEE will furnish to SOCIETY the dialogue, if any, used in specified programs. In cases where dialogue is only available in recorded form, it will be sufficient for LICENSEE to permit SOCIETY to screen the recording. When the dialogue is available in written form in any of the cities where SOCIETY has an office and it is inconvenient for LICENSEE to make an additional copy, it will be sufficient if LICENSEE permits a representative of SOCIETY to examine the file copy of the dialogue at LICENSEE's office. LICENSEE will have no obligation to furnish SOCIETY with dialogue in cases where it does not have within its control either a written or recorded version of the dialogue.

C. With respect to motion pictures (or other prerecorded programs designed for presentation on a number of stations and for which cue sheets are customarily made) broadcast from or through the station on LICENSEE's local television programs, LICENSEE's obligations under subparagraphs A and B of this paragraph 3 shall be deemed to have been complied with if LICENSEE shall identify the picture for SOCIETY by its title, the name of the producer where available, and the copyright notice contained therein where available. If SOCIETY does not have a music cue sheet for such picture, and LICENSEE does have such a sheet, LICENSEE shall make such music cue sheet available to SOCIETY for examination at SOCIETY's request and SOCIETY shall return such sheet to LICENSEE promptly.

D. SOCIETY shall make requests pursuant to subparagraphs A and B of this paragraph 3 only where reasonably necessary for its purposes and, except where the information is necessary with respect to SOCIETY's survey of past performances, shall give LICENSEE notice of any request under subparagraph A at least three months prior to the commencement of the period covered by said request. The provisions of subparagraphs B and C of this paragraph 3 shall not limit LICENSEE's obligation to cooperate with SOCIETY in connection with any claim, demand or action referred to in subparagraph 11A of this agreement.

4A. The members of SOCIETY shall have the right, at any time and from time to time, in good faith, to restrict the television broadcasting of compositions from musical comedies, operas, operettas and motion pictures, or any other composition being excessively broadcast, only for the purpose of preventing harmful effect upon such musical comedies, operas, operettas, motion pictures or compositions, in respect to other interests under the copyrights thereof; provided, however, that the maximum number of compositions which may be at any time thus restricted shall not exceed 750 and moreover that limited licenses will be granted upon application to SOCIETY entirely free of additional charge as to restricted compositions, if and when the copyright owners thereof are unable to show reasonable hazards to their major interests likely to result from such television broadcasting; and provided further that such right to restrict any such composition shall not be exercised for the purpose of permitting the fixing or regulating of fees for the recording or transcribing of such composition; and provided further that in no case shall any charges, "free plugs", or other consideration be required in respect of any permission granted to perform a restricted composition; and provided further that in no event shall any composition, after the initial television broadcast thereof, be restricted for the purpose of confining further television broadcasts thereof to a particular artist, station, network or program.

B. SOCIETY reserves the further right, at any time and from time to time, in good faith, to restrict the television broadcasting of any compositions, over and above the number specified in the previous paragraph, only as to which any suit has been brought or threatened on a claim that such composition infringes a composition not contained in the repertory of SOCIETY or on a claim by a non-member of SOCIETY or by a member not listed in Schedule A, as the same may be

augmented from time to time, that SOCIETY does not have the right to license the public performance of such composition by television broadcasting.

5A. In consideration of the license herein granted, LICENSEE agrees to pay to SOCIETY the following:

1. SUSTAINING FEE

a. If the station was licensed by SOCIETY on January 1, 1968, and had reported and paid license fees to SOCIETY under the terms of SOCIETY's Local Station Blanket Television License Agreement for thirty-six or more consecutive months by January 1, 1968, LICENSEE shall pay to SOCIETY,

(1) For each calendar month during the calendar year 1968, 70% of the highest quarter hour card rate of the station in effect on January 1, 1968 for a single quarter hour of television broadcasting, provided, however, that if such highest quarter hour card rate is less than 37½% of the highest hour card rate published for the highest time classification, such highest quarter hour card rate shall be increased to 37½% of such highest hour card rate, and if such highest quarter hour card rate is more than 42½% of such highest hour card rate, such highest quarter hour card rate shall be decreased to 42½% of such highest hour card rate.

(2) For each calendar month during the calendar years beginning with 1969, LICENSEE shall pay to SOCIETY an amount which bears the same ratio to the commercial fees reported and paid by the station for such month as the ratio that sustaining fees reported and paid by the station for the year 1968 shall bear to commercial fees reported and paid by the station for the year 1968.

(3) If the station did not publish both a quarter hour card rate and an hour card rate in the highest priced segment of its broadcast day (measured from station sign-on to station sign-off) in its rate card in effect on January 1, 1968, LICENSEE shall pay to SOCIETY for the calendar year 1968 an amount which bears the same ratio to the commercial fees reported and paid by the station for the year 1968 as the average ratio that sustaining fees bore to commercial fees for the year 1968 for stations having the same broadcast revenues for purposes of classification by the Federal

Communications Commission ("FCC") in the FCC Annual Report for the year 1968.

b. If the station was not licensed by SOCIETY on January 1, 1968, or had not reported and paid license fees to SOCIETY under the terms of SOCIETY's Local Station Blanket Television License Agreement for thirty-six or more consecutive months by January 1, 1968, LICENSEE shall pay to SOCIETY,

(1) For each calendar month in any calendar year beginning 1968 in which the station shall have reported and paid license fees to SOCIETY under the terms of SOCIETY's Local Station Blanket Television License Agreement for less than thirty-six consecutive months by June 30, and for the first calendar year in which the station shall have reported and paid license fees under such license agreement for thirty-six or more consecutive months by June 30 of such year, an amount which bears the same ratio to the commercial fees reported and paid by the station for such calendar year as the average ratio that sustaining fees bore to commercial fees for such calendar year for stations having the same broadcast revenues for purposes of classification by the FCC in the FCC Annual Report for such calendar year.

(2) For each calendar month during each succeeding calendar year, LICENSEE shall pay to SOCIETY an amount which bears the same ratio to the commercial fees reported and paid by the station for that calendar month as the ratio that sustaining fees bore to commercial fees reported and paid by that station for the first calendar year in which the station reported and paid license fees under such blanket license agreement for more than thirty-six consecutive months by June 30 thereof.

c. The computations under subparagraphs (a)(3) and (b)(1) of this subparagraph 5A1 shall be made by SOCIETY subject to verification by the firm of Arthur Andersen & Co. or such other independent accounting firm as may be designated by the United States District Court for the Southern District of New York (the "Independent Accounting Firm") and shall be made after giving effect to any adjustments of the quarter hour card rates of stations to 37½% or 42½% of their hour card rates, respectively, as provided in subparagraph (a)(1) of this subparagraph 5A1.

2. COMMERCIAL FEE

In addition, a sum equal to the aggregate of the following amounts:

a. 2% of "station's basic net receipts" as defined herein for the applicable year (see subparagraph 6D); and

b. 1% of "station's increment" as defined herein for the applicable year (see subparagraph 6D).

B. The term "net receipts from sponsors" as used in this agreement shall be deemed to mean the "gross amount paid for the use of television broadcasting facilities of the station for LICENSEE's local television programs," as defined herein (reduced by the deductions specified in subparagraphs 5G, 5I, and 5J hereof), less any advertising agency commission not to exceed 15% of the remainder actually allowed to a recognized advertising agency not owned or controlled by LICENSEE. No deduction for advertising agency commissions may be taken for commissions paid on sums which are not included in, or which are deductible from, the "gross amount paid for the use of television broadcasting facilities of the station for LICENSEE's local television programs".

C. The term "net receipts from sponsors after deductions" as used in this agreement shall be deemed to mean net receipts from sponsors, less a sales commission on the net receipts from sponsors equal to 15% of such net receipts, unless LICENSEE is an independent station and elects to compute the license fees due SOCIETY under the itemized deduction method of reporting in accordance with subparagraph 5G of this agreement, in which event the deduction for sales commission on such net receipts shall equal 20% thereof, instead of 15%.

D. The term "gross amount paid for the use of television broadcasting facilities of the station for LICENSEE's local television programs" as used in this agreement shall be deemed to mean all payments made (whether in money or in any other form) by or on behalf of the sponsor of each program for the use of the television broadcasting facilities of the station for all such local television programs, after deducting only rate card discounts, quantity and/or frequency, actually allowed, and whether such payment shall have been made directly to LICENSEE or to any other persons, firms or corporations. Where merchandise, services, or any thing or service of value is received in lieu of cash consideration for the use of the television broadcasting facilities of the station, the same shall be described and the reasonable value thereof determined and accounting made to SOCIETY upon the same basis as if a regular billing had been made by LICENSEE therefor in a

sum equal to such reasonable value, which in no event shall be deemed to exceed LICENSEE's prevailing published card rate for such television broadcasting facilities.

LICENSEE's gross amount paid for the use of television broadcasting facilities of the station for LICENSEE's local television programs for any particular year shall not be less than the aggregate of:

(i) the amount reportable by LICENSEE to the FCC as LICENSEE's "total sale of station time" for the year (the amount reportable on Schedule 1, line 11 of FCC Form 324 in effect for the year 1968), and

(ii) the amount reportable by LICENSEE to the FCC as LICENSEE's "total incidental broadcasting revenues" for the year (the amount reportable on Schedule 1, line 18 of FCC Form 324 in effect for the year 1968),

plus all commissions, if any, deducted in reporting these amounts, reduced by revenues received from all regular national television networks and from any occasional television networks which are licensed by SOCIETY (as distinguished from its members) at the source, which are reported pursuant to (i) of this subparagraph.

E. The term "basic net receipts" as used in this agreement shall be an amount computed by adding the net receipts from sponsors after deductions computed as provided in subparagraphs E1 and E2 below, excluding from such computation the net receipts from sponsors after deductions computed as provided in subparagraph E3 below:

1. One-half of the total net receipts from sponsors after deductions reported and paid to SOCIETY for the years 1964 and 1965 by all local television stations (excluding television stations owned and operated by the three regular national television networks, ABC, CBS, and NBC)

a. which were licensed under the terms of SOCIETY's Local Station Blanket Television License Agreement during the years 1964 and 1965, and

b. which had been licensed by SOCIETY prior to July 1, 1961 and had submitted reports and payments under such Blanket License Agreement for the entire period from July 1, 1961 through December 31, 1965, on or before August 15, 1968, and

c. which had not discontinued operations prior to July 1 of the calendar year for which such basic net receipts are being computed, and

d. with respect to the computation for the calendar years commencing January 1, 1974, which have renewed this agreement pursuant to paragraph 10 hereof.

2. The net receipts from sponsors after deductions reported to SOCIETY by all other local television stations (excluding stations described in subparagraph E3 below) for the calendar year in which such stations shall have submitted timely reports and payments of license fees under such blanket license agreement for thirty-six consecutive months by June 30 of any year subsequent to 1964. SOCIETY shall furnish the Independent Accounting Firm with a list of the stations whose net receipts from sponsors after deductions are not eligible for inclusion in the computation of basic net receipts by reason of the failure of such stations to have submitted timely reports and payments for thirty-six consecutive months by June 30 of any year subsequent to 1964. Each such station shall be deemed to have submitted timely reports and payments for thirty-six consecutive months by June 30 of any year subsequent to 1964 if such reports and payments are submitted to SOCIETY not later than sixty days after SOCIETY has furnished to the Independent Accounting Firm the list of stations as provided in this subparagraph E2. The net receipts from sponsors after deductions for the calendar year included in the basic net receipts with respect to such stations shall be subject to adjustment if required as a result of a subsequent examination of the station's books and records for the particular year pursuant to paragraph 8 of this agreement.

3. There shall be excluded from the computation of basic net receipts the net receipts from sponsors after deductions for all local television stations which

a. were licensed under the terms of SOCIETY's Local Station Blanket Television License Agreement prior to July 1, 1961 and had not submitted reports and payments under such Blanket License Agreement for the entire period from July 1, 1961 through December 31, 1965 on or before August 15, 1968, or

b. were not licensed under the terms of SOCIETY's Local Station Blanket Television License Agreement prior to July 1, 1961 but (i) had been broadcasting on a regular basis for thirty-six or more consecutive months prior to June 30, 1964 and (ii) had not submitted reports and payments to SOCIETY under the terms of such Blanket License Agreement for thirty-six or more consecutive months by June 30, 1964.

F. The term "increment" as used in this agreement shall be deemed to mean an amount equal to the excess, if any, above the basic net receipts applicable to a particular year, of the aggregate of the net receipts from sponsors after deductions reported and paid to SOCIETY in each of the years beginning with 1968 by only those stations whose net receipts from sponsors after deductions are included in the basic net receipts applicable to such year. Net receipts from sponsors after deductions for stations whose net receipts from sponsors after deductions are not included in computing basic net receipts shall not be considered in computing increment.

G. LICENSEE may deduct the following amounts from the gross amount paid for the use of television broadcasting facilities of the station for LICENSEE's local television programs:

1. *Film Costs:* LICENSEE may deduct 80% of the cost of films or video tapes purchased by LICENSEE for use on prerecorded feature film programs, cartoons, or syndicated film or video tape programs.

2. *Talent Costs:* LICENSEE may deduct the following payments to personnel who appear on the air on LICENSEE's local television programs:

a. Talent Especially Engaged for a Particular Program or Programs: LICENSEE may deduct the salary and talent fees paid to on-the-air talent especially engaged for a particular program or programs whose sole duties are acting as on-the-air talent personalities and in preparing therefor.

b. Staff Announcers: LICENSEE may deduct talent fees paid to staff announcers above their base salaries.

c. With respect to personnel other than those covered by the provisions of subparagraph G2a who appear on the air on LICENSEE's local programs on a regular basis and who

also have other duties (such as, for example, a sports announcer who is also a sports director or a newscaster who is also a news director of the station), LICENSEE may deduct the talent fees paid to such personnel above their base salaries, up to a maximum of half of the total annual compensation paid such individual with respect to all of his duties.

3. *Rights Costs:* LICENSEE may deduct the actual payments made by LICENSEE for broadcast rights for a specific local commercial sports program or other special event. The amount deducted by LICENSEE for broadcast rights may not exceed the amount actually paid to or for the original holder of the broadcast rights for the particular event.

4. *Remote Lines:* LICENSEE may deduct the actual payments made by LICENSEE for a specific local commercial program to or for the telephone company or like transmission utility for remote pickup necessary to broadcast that program from a point outside the studio of the station. The amount deducted by LICENSEE as payment for remote lines may not exceed the amount actually paid to or for the telephone company or like transmission utility.

5. *Prizes to Participants on a Program:* LICENSEE may deduct the actual payments made by LICENSEE for a specific local commercial program for prizes to participants who appear on that program.

6. *Outside News Service:* LICENSEE may deduct 80% of the actual payments made by LICENSEE for news service purchased by LICENSEE from a bona fide supplier of news service (such as, for example, AP or UPI or other similar agency) not affiliated, or in common ownership, with LICENSEE.

H. Co-operative programs are programs which are furnished by a regular national television network or by an occasional television network licensed by SOCIETY (as distinguished from its members) at the source to its affiliated stations under an arrangement permitting an affiliate to broadcast such programs on a sustaining basis or on a commercial basis under the sponsorship of a local, regional or national advertiser contracting directly with such affiliated station or its representative for the incorporation of the commercial credits of such advertiser into the program as broadcast by such affiliated station. For the purposes of this agreement only, and without prejudice to the

position of SOCIETY or LICENSEE or any network of which LICENSEE is an affiliated station as to the status of co-operative programs under SOCIETY's non-visual broadcasting licenses, such co-operative television programs shall be deemed to be network television programs as defined herein.

I. No payment shall be required hereunder with respect to any sums received from political local television programs of LICENSEE.

J. No payment shall be required hereunder with respect to a local commercial television program of LICENSEE presented by motion picture or by transcription if a license has been granted by SOCIETY (as distinguished from its members) at the source to perform on such local commercial television program by means of such motion picture or such transcription, as the case may be, the musical compositions embodied therein.

K. If any local television program of LICENSEE produced solely for broadcasting purposes is presented in a studio, auditorium or hall where an audience is admitted free of charge, or where the entire admittance charge is paid to an eleemosynary institution which shall request a gratuitous license from SOCIETY, no additional royalties or fees shall be charged by reason of the presence of such audience.

6A. On or before the last day of February in each calendar year during the term of this agreement, SOCIETY shall compute the following:

1. The basic net receipts applicable to the preceding year, adjusted to delete net receipts from sponsors after deductions previously included in the basic net receipts for stations that had either (a) discontinued operations prior to July 1 of the preceding calendar year, or (b) with respect to the calendar years commencing January 1, 1974, did not renew this agreement pursuant to paragraph 10 hereof, and to add net receipts from sponsors after deductions for stations that submitted, for the first time, timely reports and payments of license fees under SOCIETY's Local Station Blanket Television License Agreement for thirty-six or more consecutive months by June 30 of that year as provided in subparagraph 5E2 of this agreement; and

2. The increment applicable to the preceding year.

Upon completion of these computations, SOCIETY shall submit the results for verification to the Independent Accounting Firm. SOCIETY

shall give the Independent Accounting Firm (i) a list showing each station whose net receipts from sponsors after deductions are included in the basic net receipts and in the increment applicable to the preceding year, and showing each station not included together with an explanation of the basis for the exclusions, and (ii) a list showing the amount of net receipts from sponsors after deductions for each station so included for said preceding year. SOCIETY shall make available to the Independent Accounting Firm the books and records of SOCIETY necessary to verify SOCIETY's computations. The Independent Accounting Firm shall consider all data and information coming to its attention in connection with SOCIETY's computations as completely and entirely confidential.

B. Not later than March 31 of each year, the Independent Accounting Firm shall complete its verification of SOCIETY's computations and (after having previously discussed the matter with SOCIETY and having allowed SOCIETY to make adjustments, if any, which SOCIETY deems appropriate) shall notify SOCIETY and the "All-Industry Television Station Music License Committee" (the "All-Industry Committee") of its conclusions. LICENSEE hereby appoints the All-Industry Committee as its attorney in fact for the purpose of reviewing these computations. If SOCIETY and the All-Industry Committee fail to agree on any computations, the matter shall be submitted to the United States District Court for the Southern District of New York for determination as provided in the order entered by said Court in *U. S.* v. *ASCAP*; *In the Matter of the Application of Shenandoah Valley Broadcasting, Inc. et al.*, Civil Action No. 13-95, July 28, 1969.

C. Within thirty days after the computations under subparagraph A have been made and verified, or within thirty days after such computations have been determined in accordance with subparagraph B, SOCIETY shall notify LICENSEE of the amount of the basic net receipts applicable to the preceding year and the amount of any increment applicable to the preceding year.

D. Upon receipt of such notice, LICENSEE shall divide its net receipts from sponsors after deductions for the calendar year covered by such notice in proportion to the basic net receipts and increment computed and verified for that year. The resulting amounts shall be "station's basic net receipts" and "station's increment" respectively.

LICENSEE shall compute the license fees due for that year in accordance with the terms of subparagraph 5A of this agreement. In the event that the commercial fees and sustaining fees due SOCIETY for that year are greater than the commercial fees and sustaining fees actually paid by LICENSEE for that year, LICENSEE shall submit such additional commercial fees and sustaining fees within thirty days after receipt of such notice from SOCIETY. In the event that the commercial fees and sustaining fees due SOCIETY for that year are less than the commercial fees and sustaining fees actually paid by LICENSEE for that year, LICENSEE shall apply such excess payments in computing its monthly accountings to SOCIETY for the month or months immediately following receipt of such notice from SOCIETY.

E1. By October 15 of each year (the "current year"), SOCIETY shall estimate the basic net receipts and increment for the succeeding year and shall report its estimate to the Independent Accounting Firm and to the All-Industry Committee.

a. An estimate of net receipts from sponsors after deductions for the current year shall be made by determining that amount which bears the same ratio to net receipts from sponsors after deductions reported and paid to SOCIETY by stations whose net receipts from sponsors after deductions were included in computing basic net receipts for the preceding year as (i) net receipts from sponsors after deductions reported and paid to SOCIETY for the first eight months of the current year by stations whose net receipts from sponsors after deductions are to be included in computing basic net receipts applicable to such year bears to (ii) net receipts from sponsors after deductions reported and paid to SOCIETY for the first eight months of the preceding year by stations whose net receipts from sponsors after deductions were included in computing basic net receipts applicable to such preceding year.

b. The estimate for the succeeding year shall be projected by adjusting the estimate for the current year by the same percentage change, if any, between the estimate for the current year and the amounts for the preceding year.

c. Increment shall be estimated as the excess, if any, of estimated net receipts from sponsors after deductions above estimated basic net receipts.

2. With the estimate, SOCIETY shall furnish the Independent Accounting Firm a schedule showing the stations whose net receipts from sponsors after deductions were included or were excluded for any period in computing the estimate, together with an explanation of the basis for the exclusions. The Independent Accounting Firm shall verify said computation and estimate for the succeeding year by December 1 of the current year. LICENSEE hereby authorizes the Independent Accounting Firm to notify LICENSEE in confidence if it appears that LICENSEE's net receipts from sponsors after deductions were excluded from the computation of estimated basic net receipts or increment for the current year because of failure to file timely reports or to make timely payments.

3. Promptly after such verification, SOCIETY shall notify LICENSEE of the basic net receipts and increment for the succeeding year as estimated and verified. LICENSEE shall compute its monthly accountings to SOCIETY for such succeeding year by dividing its net receipts from sponsors after deductions into station's basic net receipts and station's increment in proportion to the basic net receipts and increment as estimated and verified for that year.

7A. As to SUSTAINING FEE, LICENSEE shall on the twentieth day of each month during the term hereof pay to SOCIETY the monthly sustaining fee payable hereunder and such payments shall be accompanied by statements setting forth the basis upon which the computation is made.

B. As to COMMERCIAL FEE, LICENSEE shall render monthly statements to SOCIETY on or before the twentieth day of each month covering the period of the preceding calendar month, on forms supplied gratis by SOCIETY, with respect to all gross amounts paid for the use of television broadcasting facilities for LICENSEE's local television programs, and also showing all deductions in order to arrive at net receipts from sponsors and net receipts from sponsors after deductions as herein provided, without exception, and the division of its net receipts from sponsors after deductions between station's basic net receipts and station's increment as herein provided, and the percentages thereof payable to SOCIETY, which statements shall be accompanied by the remittance due SOCIETY under the terms hereof.

C. Accountings and payments shall be made on a billing basis, with the right of deduction or rebate for bad accounts and discounts

allowed or rebates paid. All billings made subsequent to the termination of this agreement with respect to local television broadcasts made during the term hereof shall be accounted for by LICENSEE as and when such billings are made by LICENSEE.

8. SOCIETY shall have the right, by its duly authorized representatives, at any time during customary business hours, to examine the books and records of account of LICENSEE only to such extent as may be necessary to verify (a) any statement of accounting required pursuant hereto, and (b) any statement of accounting to SOCIETY required of a network in connection with co-operative television programs made available to LICENSEE by such network. SOCIETY shall consider all data and information coming to its attention as a result of any examination of such books and records as completely and entirely confidential.

9. Upon any breach or default by LICENSEE of any terms herein contained relating to the reports, accountings or payments required to be made by LICENSEE, SOCIETY may give LICENSEE thirty days notice in writing to cure such breach or default, and in the event that such breach or default has not been cured within said thirty days, SOCIETY may then promptly terminate this license.

10. This agreement and all the terms and conditions thereof shall be renewed and extended for all purposes for an additional period from January 1, 1974 through December 31, 1977 ("the additional period") unless either

A. LICENSEE gives SOCIETY written notice on or before December 31, 1972 that LICENSEE elects not to renew and extend the agreement for the additional period, or

B. SOCIETY gives LICENSEE written notice on or before February 28, 1973 that SOCIETY elects not to renew and extend the agreement for the additional period.

11A. SOCIETY agrees to indemnify, save and hold LICENSEE, its sponsors and their advertising agencies, its and their artists, and each of them harmless, and defend LICENSEE, its sponsors and their advertising agencies, its and their artists, and each of them from and against any claim, demand or suit that may be made or brought against them or any of them with respect to performances given on LICENSEE's local television programs during the term hereof in accordance

with this license of (a) "cleared compositions", or (b) musical compositions heretofore copyrighted, composed or written by members of SOCIETY listed in Schedule A as augmented from time to time and now or hereafter during the term hereof in the repertory of SOCIETY, or (c) musical compositions hereafter during the term hereof copyrighted, composed or written by such members of SOCIETY, or (d) musical compositions which SOCIETY shall hereafter certify in writing to LICENSEE as musical compositions copyrighted, composed or written by such members of SOCIETY and included in SOCIETY's repertory for the purposes of this agreement, or (e) musical compositions "deemed to be included in the repertory of SOCIETY" in accordance with the provisions of subparagraph C of this paragraph 11. In the event of the service upon LICENSEE of any notice, process, paper or pleading under which a claim, demand or action is made or begun against LICENSEE on account of any such matter as is hereinabove referred to, LICENSEE shall promptly give SOCIETY written notice thereof and simultaneously therewith deliver to SOCIETY any such notice, process, paper or pleading, or a copy thereof, and SOCIETY at its own expense shall have sole charge of the defense of any such action or proceeding. LICENSEE, however, shall have the right to engage counsel of its own, at its own expense, who may participate in the defense of any such action or proceeding and with whom counsel for SOCIETY shall cooperate. LICENSEE shall cooperate with SOCIETY in every way in the defense of any such action or proceeding, and in any appeals that may be taken from any judgments or orders entered therein, and shall execute all pleadings, bonds or other instruments, but at the sole expense of SOCIETY, that may be required in order properly to defend and resist any such action or proceeding, and prosecute any appeals taken therein. In the event of the service upon LICENSEE of any notice, process, paper or pleading under which a claim, demand or action is made or begun against LICENSEE on account of the performance on LICENSEE's local television programs of any musical composition (other than a "cleared composition") contained in the repertory of SOCIETY but not heretofore or hereafter during the term hereof copyrighted, composed or written by members of SOCIETY and not certified by SOCIETY as a musical composition copyrighted, composed or written by members of SOCIETY, SOCIETY agrees at the request of LICENSEE to cooperate with and assist LICENSEE in the defense of any such action or proceeding, and in any appeals that LICENSEE may elect to take from any judgments or orders entered therein.

B. As used in this paragraph 11, a "cleared composition" shall mean any composition in the repertory of SOCIETY, not copyrighted, composed or written by a member of SOCIETY, which SOCIETY shall have notified LICENSEE is a composition with respect to which SOCIETY is willing to indemnify LICENSEE, provided that the performance of such composition shall be made on the specific local television program of LICENSEE for which a clearance shall have been given by SOCIETY; provided further, however, that in the event that SOCIETY notifies LICENSEE in writing that it is willing to clear such a composition without limitation to a specific program, such composition shall thereafter be regarded as a "cleared composition" until such time as SOCIETY shall rescind such clearance.

C. For the purpose of this paragraph 11 only, any musical composition (other than a musical composition or group of musical compositions expressly excepted therefrom or that may be restricted because of the operation of paragraph 4 of this agreement) which is listed in the bound volumes entitled "ASCAP Index 1963", as the same may have been revised heretofore or as the same may hereafter be revised, as a musical composition heretofore copyrighted by a present member of SOCIETY listed in Schedule A, as such list of present members may be augmented from time to time, shall be deemed to be included in the repertory of SOCIETY. SOCIETY shall have the right to make reasonable revisions in such Indices from time to time, provided, however, that no such revision and no exception referred to above shall be effective as to any broadcast of LICENSEE's local programs made, or delayed or repeat broadcasts thereof scheduled, prior to the date on which LICENSEE shall have received notice of such revision or exception. Nothing in this subparagraph C shall be deemed to limit LICENSEE's rights or to limit or affect LICENSEE's obligations to pay the license fees payable under this agreement or to limit SOCIETY's obligations to indemnify as provided in subparagraph A of this paragraph 11.

D. The provision contained in paragraph 11 shall apply to LICENSEE's sponsors and their advertising agencies, and its or their artists, as to LICENSEE's local television programs with the same effect as if in each instance there had been added to "LICENSEE" the words "its sponsors and their advertising agencies, its and their artists, and each of them."

12. In the event of the termination or suspension of the governmental licenses covering the station or any substantial alteration or variation of the terms and conditions thereof, or any major interference with the operations of the station due to governmental measures or restrictions, LICENSEE shall have the right to terminate this agreement upon seven days notice.

13. In the event of:

A. any major interference with the operations of SOCIETY in the state, territory, dependency, possession or political subdivision in which the station is located, by reason of any law of such state, territory, dependency, possession or political subdivision; or

B. any substantial increase in the cost to the SOCIETY of operating in such state, territory, dependency, possession or political subdivision, by reason of any law of such state, territory, dependency, possession or political subdivision, which is applicable to the licensing of performing rights,

SOCIETY shall have the right to apply to the United States District Court for the Southern District of New York for an order terminating this agreement.

14. The meaning of the provisions of this agreement shall be construed in accordance with the law of the State of New York.

15. All notices required or permitted to be given by either of the parties to the other hereunder shall be duly and properly given if mailed to such other party by registered United States mail addressed to such other party at its main office for the transaction of business.

16. This agreement shall enure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns, but no assignment shall relieve the parties hereto of their respective obligations hereunder as to performances broadcast, acts done and obligations incurred prior to the effective date of the assignment.

17. Annexed hereto is a letter dated July 28, 1969, from counsel for SOCIETY to counsel for the All-Industry Committee, setting forth the understanding of the parties with respect to certain additional

license terms which shall be deemed as fully a part of this agreement as if set forth herein.

IN WITNESS WHEREOF, this agreement has been duly executed by SOCIETY and LICENSEE this day of , 19 , as of the day of , 19 .

AMERICAN SOCIETY OF COMPOSERS,
AUTHORS AND PUBLISHERS

By .....

.....
LICENSEE

By .....

Title .....

E 316

MURRAY HILL 8-8600

CABLE ADDRESS: ASCAP, NEW YORK

AMERICAN SOCIETY OF COMPOSERS, AUTHORS AND PUBLISHERS
575 MADISON AVENUE
NEW YORK, N. Y. 10022

HERMAN FINKELSTEIN
GENERAL COUNSEL

July 28, 1969

Donald Schapiro, Esq.
Barrett Knapp Smith & Schapiro
26 Broadway
New York, New York 10004

Re: U.S. v. ASCAP (Application of Shenandoah Valley Broadcasting, Inc., et al.)

Dear Mr. Schapiro:

This letter sets forth our understanding with respect to certain matters not expressly covered by the proposed new blanket television agreement submitted to Judge Ryan for approval in connection with the final order entered in the above proceeding.

These matters were discussed in the negotiations conducted by the All-Industry Television Station Music License Committee. It was the mutual desire of your committee and of the Society's television negotiating committee to avoid future misunderstandings as much as possible by setting forth all of the deductions which may be taken under the license agreement, and by spelling out in detail various understandings we have reached concerning the methods of computing the amounts which must be reported to the Society and which may be deducted under the license agreement.

With the aid of the Court, we have agreed upon the following, which shall be deemed a part of the blanket agreement:

1. The footnote to line 1 of the reporting form reads "all revenue must be reported on this line including 'total sale of station time' (FCC Form 324, Schedule 1, line 11) plus 'total incidental broadcast revenues' (FCC Form 324, Schedule 1, line 18) plus all commissions, if any, deducted in reporting these amounts."

Reports to the Society shall be made in accordance with the following:

(a) Line 1 of the reporting form shall include all payments to or on behalf of the station made by or on behalf of the sponsor of each program broadcast on the station which are related to such program, including, without any limitation, payments for program material, rights, production, commercials, studio charges, line charges, manpower, equipment, and facilities charges. Line 1 shall also include all revenues, if any, relating to any item for which a deduction is taken in reporting to the Society.

(b) Revenue received by a reporting station from the sale to others for broadcast on another station of programs broadcast by the reporting station ("syndication revenue") shall be reported as follows:

(i) a station electing the optional standard deduction shall not report any syndication revenue to the Society unless the station itemized deductions at the time the particular program was originally broadcast and failed to elect, pursuant to sub-paragraph (ii) hereof, not to claim any deductions with respect to such program.

(ii) a station itemizing deductions shall report all syndication revenue to the Society except as to programs for which it has elected not to claim any deductions. Such election shall be made by advising the Society, concurrently with the report for the period during which the program was originally broadcast, that a particular program (with appropriate description) was produced for syndication, and that no deductions have been or will be taken by such station with respect to such program. For this purpose, each episode in a series may be treated as a separate program.

(c) Payments received for the following are not reportable if such payments are not required to be included under paragraphs (a) and (b) above:

(i) furnishing manpower or equipment to a company (whether network, station, or a company not involved in broadcasting), where such revenue is not related to the reporting station's broadcasting activities;

(ii) production of films or other material solely for non-broadcast use; and

(iii) production for another of television programs or commercials where the production is not related to the sponsorship of such programs or commercials on the station.

(d) Where the sponsor of a program broadcast on the station engages in a transaction with the station which produces revenue for the station which would not otherwise be includible on line 1, the amount of such revenue shall nevertheless be included on line 1 to the extent, if any, that such revenue exceeds the revenue which would have been received by the station if the transaction had been between two parties substantially similar to the station and the sponsor but having no sponsorship relation and dealing at arm's length.

(e) In the event a person, firm or corporation affiliated with or related to the station receives amounts from the sponsor of a program broadcast on the station related to such broadcast, such amounts and applicable deductions, if any, shall be included in the station's reports to the Society.

Within 120 days following the close of each calendar year, each station shall have the following options:

(A) To send the Society a copy of Schedule 1 of the FCC Form 324 filed by the station for that year (or a copy of such other reporting form as the FCC may require the station to use during the term of this agreement to report the data that appear on Schedule 1 of the FCC Form 324 in effect for the year 1968), at the time such report is filed with the FCC, or

(B) To submit to the Independent Accounting Firm a copy of Schedule 1 of the FCC Form 324 (or any replacement thereof) submitted by the station to the FCC for the particular year at the same time as that form is submitted to the FCC, with instructions to the Independent Accounting Firm to copy the data supporting the station's computations of its "gross revenues" as reflected on lines 1 and 3 of the station's reports submitted to the Society for the year and to submit that data to the Society, or

(C) To direct the FCC to permit the Independent Accounting Firm to copy from the FCC Form 324 (or any replacement thereof) submitted by the station to the FCC for the particular year

the data supporting the station's computation of its "gross revenues" as reflected on lines 1 and 3 of the station's reports submitted to the Society for the year.

If the station elects to proceed under subparagraph (B), the Independent Accounting Firm shall furnish the data promptly to the Society. If the station elects to proceed under subparagraph (C), the Independent Accounting Firm shall furnish the data to the Society as promptly as possible, but not later than October 1 of the following year. If the Independent Accounting Firm does not furnish the data to the Society for any year by October 1 of the following year, the options set forth in subparagraphs (B) and (C) shall no longer be available to the station for that year and the station shall be required to send promptly to the Society a copy of Schedule 1 of the form filed by the station with the FCC for that year.

In the event that the amount which the station reported to the FCC is greater than the "gross revenues" as reflected on lines 1 and 3 of the station's reports submitted to the Society for the year, the option set forth in subparagraph (C) shall not be available to the station for the five succeeding years, and the station shall be required to send the Society a copy of Schedule 1 of the form filed by the station with the FCC for each of such five years, as provided in subparagraph (A) above, at the time each such report is filed with the FCC, or to send a copy of such schedule to the Independent Accounting Firm for each of such five years, as provided in subparagraph (B) above, for transmittal by the Independent Accounting Firm to the Society within twenty days.

The Society shall be entitled to request and to receive from the Independent Accounting Firm the data for any station or group of stations prior to October 1 of any year. The Independent Accounting Firm shall use its best efforts to comply with any such request by the Society.

The Society shall consider all FCC data coming to its attention pursuant to this paragraph as completely and entirely confidential.

2. The amount which a station must enter on line 1 of the report form shall include all amounts received by the station from all television networks, whether or not such networks are licensed by the Society at the source. Revenues received from all regular national television networks and from any occasional television network which

is licensed by the Society (as distinguished from its members) at the source are to be deducted on lines 4a and 4b of the report form.

(a) If the station is affiliated in common ownership with an occasional television network not licensed by the Society at the source, the revenues which the station must include on line 1 of its reports to the Society shall not be less than the amount which the station would have received if the transaction had been between two parties substantially similar to the station and its affiliated occasional television network, but not affiliated in common ownership, dealing at arm's length for the broadcast by the station of the programs of the occasional television network.

(b) A program broadcast by a group of two or more stations constituting neither a regular national television network nor an occasional television network as defined in the license is a local television program, and all payments made by or on behalf of the sponsors of the program shall be reported on line 1 of the station's report form.

3. No accounting need be made to the Society with respect to the following trade deals:

(a) *Film Trades:* if the station receives films in return for carrying announcements (whether incorporated in the film or included in other programs), the station shall not be required to include any revenues with respect to such announcements on line 2 of its report form, but no other deduction may be taken by the station for the cost of that film—the value of the spots furnished by the station and otherwise reportable as revenue being considered to be a complete offset to the deductible cost of film.

(b) *In-store Promotion:* if the station pursuant to an agreement with a sponsor provides that sponsor with both announcements for the sponsor and, in addition, promotion space in stores in which the sponsor's product advertised on the station is sold, and where the station, in accordance with the agreement, gives the store in which the product is sold spot announcements on the station in return for promotion space for the sponsor's product in the store, the transaction shall be reported as follows: The station shall include in its gross revenues on line 1 the entire amount paid by the sponsor for both the use of the station's facilities and for the promotion space in the store. The station shall not be required to include on line 2 any additional amount

representing the trade with the store for the in-store promotion space. The latter transaction shall be considered a "wash"—the revenue for the in-store promotion being completely offset by the value of the spots given to the store.

(c) *Radio-Television Cross Promotions:* if a television station provides announcements to another station (radio or television) in return for announcements on the latter station promoting such television station, such television station shall not be required to include any revenue with respect to any such announcements on line 2 of the report form, provided that the station to which the announcements are furnished is licensed by the Society under this Local Station Blanket Television License Agreement in the case of a television station or, in the case of a radio station, under the terms of the license agreement known as the "Local Station Blanket Radio License Agreement" in effect between the Society and radio stations on January 1, 1969, or, for the period after February 29, 1972, as such agreement may be extended or modified for the majority of radio stations.

(d) *Trades with Newspapers:* if the station exchanges announcements of newspapers on its station in return for advertisements of the station in such newspapers, the amount to be included by the station on line 2 of its report form shall be computed as follows:

(i) If the newspaper is affiliated with the station in common ownership:

50% of the amount which the station would charge any other advertiser purchasing those announcements on a "run of schedule basis."

(ii) If the newspaper is not affiliated with the station in common ownership:

100% of the amount which the station would charge any other advertiser purchasing those announcements on a "run of schedule basis."

(iii) If the announcements of any newspaper appear in time periods which are not available for sale on a "run of schedule basis", the value of the announcements shall be based on the station's card rates for such programs or time period.

The station may elect to compensate the Society for such newspaper announcements by making available to the Society periods

of time for institutional announcements in behalf of the Society determined as follows:

> The total number of seconds of announcements given by the station to such newspaper advertisers for announcements in any calendar year shall be multiplied by 1.8%, except that if in the preceding calendar year the increment is at least 10% more than basic net receipts, the total number of seconds of announcements given by the station to such newspaper advertisers for announcements shall be multiplied by 1%. The value of the periods of time given to the Society in accordance with this provision shall not be considered in making any other computations or payments required to be made under this agreement.

If the station elects to compensate the Society for such newspaper announcements by making available to the Society periods of time computed as set forth above, the station shall not be required to include any revenues with respect to such newspaper announcements on line 2 of this report form or elsewhere.

The station may make such election for any calendar year during the term of this agreement by notifying the Society in writing not less than ninety days in advance of the beginning of the calendar year to which the election relates, and may revoke such election for any subsequent calendar year by giving the Society not less than ninety days advance written notice.

4. The following are additional examples of how the most common types of trade deals are to be reflected in the station's monthly reports:

(a) *Trades with TV Guide:* if the station gives *TV Guide* announcements in return for advertising space in *TV Guide,* the amount which the station must include on line 2 of its monthly report form shall be the amount which *TV Guide* would charge any other advertiser for the advertising space which the station received, computed in accordance with the applicable *TV Guide* rate card.

(b) *Trades for automobiles, hotel space, airplane tickets, magazine advertising space or other similar product or service:* if the station gives announcements in return for the use of automobiles, hotel space, airplane tickets, magazine advertising

space, or other similar product or service the amount which the station must include on line 2 of its monthly report form shall be the amount which an outside purchaser for cash would have to pay the supplier for such merchandise or services.

(c) *Announcements on behalf of related services, products, magazines or companies:* if the station gives announcements to promote a service, product, magazine, company or other enterprise with which it is affiliated in common ownership (except for newspapers or other broadcasting stations, which are subject to the provisions of subparagraphs 3(c) and 3(d) of this letter), the amount which the station must include on line 2 of its monthly report form shall be the amount which the station would charge any other advertiser dealing at arm's length with the station for the announcements furnished by the station to its affiliated company.

(d) With respect to any trade deal, the amount to be included by the station on line 2 of its monthly report form shall not exceed the station's card rate for the broadcasting facilities which the station furnished the sponsor.

5. Subparagraph 7C of the license provides for a deduction or rebate for bad accounts. On line 6b of its report form, a station may deduct bad accounts which were included in the station's "gross revenues" as reflected on line 1 of the station's prior monthly accountings to the Society. This deduction may be taken only at the time such bad accounts are actually written off by the station. In the event that the station makes any subsequent recovery of any bad accounts previously written off and deducted in the station's monthly accountings to the Society, the amount of such recovery shall be included on line 1 of the station's monthly report for the period in which such recovery is made.

6. With respect to the permissible deduction for film costs in accordance with subparagraph 5G1 of the license (line 8a of the itemized deduction report forms), the amount which the station may deduct each month shall be computed by taking the amount actually paid to the film distributor (including express charges and print costs) and dividing it by the total number of months for which the contract with the film distributor covering the broadcast of the films or video tapes is in force, provided, however, that if a different method of write-off shall be allowed by the Internal Revenue Service as the deductible cost

of that film for the purpose of computing the station's federal income tax, the station may, at its option, use that method if it exhibits to the Society the appropriate schedules from the station's federal income tax return showing the amount allowed by the Internal Revenue Service as the deductible cost of the film. The station's monthly deduction for film costs shall be 80% of the resulting figure, subject to the following exceptions:

(a) If the station purchased the films or video tapes from anyone other than a film distributor, or acquired such films or video tapes in connection with a purchase of a station, the amount used by the station in computing its deduction for film shall not exceed the amount actually paid to the film distributor (including express charges and print costs) by the station or network that originally purchased the films or video tapes less the amount deducted as film cost by the station or network that originally purchased the films or video tapes in previous monthly accountings by that station to the Society.

(b) If the supplier of any films or video tapes is affiliated with the station in common ownership, the amount which the station may use in computing its monthly deduction for film cost shall not exceed the amount that the films or video tapes would cost if the transaction had been between two parties substantially similar to the station and its affiliated film supplier but not affiliated in common ownership, dealing at arm's length for the right to broadcast the films or video tapes on the station.

7. With respect to the permissible deduction for talent cost in accordance with subparagraph 5G2 of the license (line 8b of the itemized deduction report forms):

(a) An on-the-air talent personality whose duties include assembling and preparing material for broadcast on his own programs (such as, for example, a sports announcer who assembles and prepares interviews and other elements of his own program) shall be deemed to be an on-the-air talent personality whose sole duty is acting as such. Promotional appearances by an on-the-air talent personality in behalf of his own program shall be considered part of the duties of an on-the-air talent personality.

If, in addition to preparing his own material, or performing other duties related solely to his own program, an individual also

assembles or prepares material for other programs or has general supervisory, administrative or other duties not related solely to his own program, the salary and talent fees paid to that individual shall be treated in accordance wit' subparagraph 5G2c of the license.

(b) In computing the base salary for staff announcers, if the station is not a party to an agreement with the American Federation of Television and Radio Artists (AFTRA) covering the talent fees payable to the station's staff announcers, the amount which the station may deduct as talent fees shall be determined by dividing the total amounts paid to each staff announcer between base salary and talent fees in the ratio that the average "40 hour weekly wage" (which shall be deemed to be the equivalent of base salary) bears to the average "gross weekly compensation" for staff announcers in stations in the same category of market size and geographic location as shown in the *Wages, Hours and Employment Report for Television* published by the National Association of Broadcasters for the year covering or closest to the period in question.

(c) In computing the amount deductible as talent costs, there shall be excluded from the salary or talent fees paid to any individual any social security expenses or other payroll costs, petty cash expenses, and pension fund contributions paid to or for the account of any such individual whose compensation is otherwise deducted in whole or in part.

8. An independent station that itemizes its deductions may deduct on line 8g of the itemized deduction report form for independent stations an additional amount equal to 5% of the station's "gross revenue" attributable to the station's locally produced remote programs and included in line 7 of such itemized deduction report form.

The "station's locally produced remote programs" shall be deemed to mean a local television program produced by the station having a minimum duration of thirty minutes consisting of the broadcast of a sports event or other public event taking place outside a studio of the station (such as, for example, a church service, awards banquet, or similar public event) of which at least 90% of the program time (excluding time for commercial announcements) consists of either:

(a) the broadcast of the event transmitted simultaneously by the station, or

(b) the broadcast of the event recorded at the station simultaneously with the event and broadcast on a "delayed" basis within twenty-four hours after the event, except that in extraordinary circumstances the broadcast may take place up to seven days after the event actually occurred.

The station's gross revenue attributable to its locally produced remote programs shall consist of all of its gross revenue attributable to the sale of such programs including announcements within such programs and announcements broadcast in the station breaks immediately preceding such programs.

In the event that the station adopts a method of accounting which allocates a disproportionate share of the station's revenues to announcements broadcast in the station breaks immediately preceding its locally produced remote programs, the Society may elect to disregard the method of accounting used by the station and to divide the revenues for such announcements equally between the programs preceding the announcements and the programs following them.

9. Optional Standard Deduction. In lieu of computing its accountings to the Society using the itemized deduction method of reporting set forth in subparagraph 5G of the license and in paragraphs 6, 7 and 8 of this letter, each station may elect to compute its accountings to the Society using the optional standard deduction method. The optional standard deduction shall be as follows:

(a) *Network Affiliates.* If the station is an affiliated station of a regular national television network as defined in subparagraph 2C of the license agreement, the station may submit its monthly reports on the form headed "Affiliated Station—Optional Standard Deduction" and take the following optional standard deduction:

(i) on line 10a of such report form, the station may deduct 15% of that portion of the amount reported on line 9 ("Balance Subject to Optional Standard Deduction") attributable to

(A) the station's locally produced remote programs (as defined in paragraph 8 of this letter), and

(B) the station's live local television programs (defined as any local television program of the station in which 36% or more of the time of the program [measured by the customary clock listings of program length—*e.g.*,

60 minutes, 30 minutes, 15 minutes] as broadcast by the station is live from the station);

(ii) on line 10b of such report form, the station may deduct 10% of the balance of said amount reported on line 9.

The station's gross revenue attributable to its live local television programs shall consist of all of its gross revenue attributable to the sale of such programs including announcements within such programs and announcements broadcast in the station breaks immediately preceding such programs.

(b) *Independent Stations.* If the station is an independent station, as defined in subparagraph 2D of the license, the station may submit its monthly reports on the form headed "Independent Station—Optional Standard Deduction" and take the following optional standard deduction:

(i) on line 10a of such report form, the station may deduct 37½% of that portion of the amount reported on line 9 ("Balance Subject to Optional Standard Deduction") of such report form attributable to the station's locally produced remote programs (as defined in paragraph 8 of this letter);

(ii) on line 10b of such report form, the station may deduct 32½% of that portion of the amount reported on line 9 attributable to the station's live programs (other than the station's locally produced remote programs) as defined in subparagraph 9(a) of this letter;

(iii) on line 10c of such report form, the station may deduct 10% of that portion of the amount reported on line 9 attributable to sales by the station of its announcements broadcast (a) within programs of an occasional television network not licensed by the Society at the source and (b) in the station breaks immediately preceding such programs. No deduction may be taken with respect to any other amounts attributable to programs of an occasional television network not licensed by the Society at the source;

(iv) on line 10d of such report form, the station may deduct 25% of the balance reported on line 9, after deducting the amounts used in computing the deductions under (i), (ii) and (iii) above, and excluding any amounts received by the station from any occasional television network not licensed by the Society at the source.

(c) No deduction may be taken by either a network affiliate or an independent station with respect to any amounts received by the station from any occasional television network which is not licensed by the Society at the source. Such amounts, computed as provided in paragraph 2 of this letter, shall be stated separately on line 8 of the report form.

(d) As shown on the Optional Standard Deduction report forms, the amount of the deductions allowed pursuant to subparagraphs (a) and (b) of this paragraph shall be computed after subtracting from the station's total gross local revenues (line 5) the deductions provided for on line 6a ("Gross Political Revenue"; see subparagraph 5I of the license); line 6b ("Bad Debts Written Off"; see subparagraph 7C of the license and paragraph 5 of this letter); line 6c ("Rate Card Discounts"; see subparagraph 5D of the license); and line 6d ("Revenue from Local Programs Licensed by the Society at the Source"; see subparagraph 5J of the license).

(e) In the event that the station adopts a method of accounting which allocates a disproportionate share of the station's revenues to announcements broadcast in the station breaks immediately preceding its locally produced remote programs, or to announcements broadcast in the station breaks immediately preceding its other live programs, the Society may elect to disregard the method of accounting used by the station and to divide the revenues for such announcements equally between the programs preceding the announcements and the programs following them.

(f) *Election of Method of Reporting:*

(i) The station may elect to compute its accountings to the Society using the optional standard deduction method of reporting by giving the Society written notice of such election within sixty days after approval of this agreement by the Court, or forty days after transmittal by the Society to the station of two copies of the approved agreement for execution by the station, whichever is later.

(ii) Each station shall have one option to change its method of computing its accountings to the Society effective January 1 of any of the calendar years 1970 through 1973

by giving the Society notice in writing of such election not less than one year in advance of the calendar years to which such election relates.

(iii) If this agreement is renewed for the period January 1, 1974 through December 31, 1977 pursuant to the provisions of paragraph 10 of the license, each station may elect to change its method of computing its accountings to the Society effective January 1, 1974 by giving the Society not less than ninety days advance written notice of such election.

(iv) If this agreement is renewed for the period January 1, 1974 through December 31, 1977 pursuant to the provisions of paragraph 10 of the license, each station shall have one option to change its method of computing its accountings to the Society effective January 1 of any of the calendar years 1975 through 1977 by giving the Society notice in writing of such election not less than one year in advance of the calendar years to which such election relates.

(g) The forms for reporting under the optional standard deduction method are attached as Schedule I (for use by Network Affiliates) and Schedule II (for use by Independent Stations). The forms for reporting on an itemized deduction basis are attached as Schedule III (for use by Network Affiliates) and Schedule IV (for use by Independent Stations).

10. *Audit Adjustments:* All audit adjustments are to be made using the division between basic net receipts and increment applicable to the year to which the adjustment relates. For the purpose of computing the basic net receipts or any increment, audit adjustments are to be divided into four categories depending upon the period to which they relate:

(a) Adjustments applicable to the years before 1967 are not to be reflected in the basic net receipts or in the increment at all;

(b) Audit adjustments for the year 1967 for stations whose net receipts from sponsors after deductions for prior years are included in the basic net receipts are to be considered part of the increment in the year in which paid, provided that they are paid within 120 days (or if the Society so elects, in any instance, 180 days) after a notice of deficiency given pursuant to this agreement has been sent by the Society;

(c) Audit adjustments for 1968 and subsequent years are to be reflected in the increment in the year in which they are paid, but only if the station's net receipts from sponsors after deductions were included in the basic net receipts applicable to the year to which the adjustment relates;

(d) For stations whose net receipts from sponsors after deductions are not included in the basic net receipts applicable to the year 1968, any audit adjustment which relates to the year for which the station's net receipts from sponsors after deductions are first added to the basic net receipts shall be reflected in computing the basic net receipts applicable to the year in which the Society notifies the station of the adjustment.

11. *Late Payments:* Late payments of license fees are to be made using the division between basic net receipts and increment applicable to the year for which the license fees were due. If the payment is by a station whose net receipts from sponsors after deductions are included in the basic net receipts, and is of fees due for the years beginning 1968, the amount of the payment is to be reflected in any increment applicable to the year in which the payment is made. Otherwise, late payments are not to be reflected in the basic net receipts or in the increment at all.

12. *Adjustment of Payments for 1968 and 1969:* Within sixty days after approval of this agreement by the Court, or forty days after transmittal by the Society to the station of two copies of the approved agreement for execution by the station, whichever is later, the station shall submit to the Society a single revised report for the year 1968 and a single revised report for the completed months of 1969, computed in accordance with the terms of this agreement. If the license fees for such periods payable under this agreement, as reflected in the revised report forms, are greater than the amounts previously paid by such station for such periods, the station shall enclose such additional payment with the revised reports. If the license fees for such periods payable under this agreement, as reflected in the revised report forms, are less than the amounts previously paid by the station for such periods, the station shall deduct the amount of the difference from its next payment or payments to the Society.

Sincerely yours,

HERMAN FINKELSTEIN

E 331 **SCHEDULE I**

STATEMENT OF ACCOUNT

AFFILIATED STATION
OPTIONAL STANDARD DEDUCTION

1. **Gross Revenue (include all billings and bad debt recoveries)* [Lic. ¶ 5D; Ltr. ¶s 1, 5]**			$
2. Adjustments for Revenue Items:			
a. Add: Reportable Revenue not included in line 1 above [Lic. Par. 5D; Ltr. Pars. 1, 3, 4]	$		
b. Deduct: Revenue not Reportable included in line 1 above [Ltr. Pars. 1, 3]			
3. **Total Gross Revenue (Item 1 plus Item 2)**			$
4. **Less: Network Revenue:**			
a. **Revenue Received from Regular National Television Networks [Lic. ¶ 2E; Ltr. ¶ 2]**	$		
b. **Revenue Received from Occasional Networks Licensed by Society at the Source [Lic. ¶ 2F; Ltr. ¶ 2]**			
c. **Gross Revenue from Sale of Cooperative Programs [Lic. ¶ 5H]**			
5. **Total Gross Local Revenue (Item 3 less Item 4)**			$
6. **Less:**			
a. **Gross Political Revenue [Lic. ¶ 5I]**	$		
b. **Bad Debts Written Off [Lic. ¶ 7C; Ltr. ¶ 5]**			
c. **Rate Card Discounts [Lic. ¶ 5D]**			
d. **Revenue from Local Programs Licensed by Society at the Source [Lic. ¶ 5J]**			
7. **Sub-Total (Item 5 less Item 6)**	$		$
8. **Less: Revenue Received from Occasional Networks Not Licensed at the Source [Ltr. ¶s 2a, 9c]**			
9. **Balance Subject to Optional Standard Deduction (Item 7 less Item 8)**	$		
10. **Less: Optional Standard Deduction [Ltr. ¶ 9]:**			
a. **Revenue Attributable to Remote and Live Programs [Ltr. ¶ 9a(i)]**	$ ____ @15%	$	
b. **Other Revenue [Ltr. ¶ 9a(ii)]**	____ @10%		
c. **Total (not to exceed Item 9)**	$		
11. **Total Revenue from Sale of Local Broadcasting Facilities (Item 7 less Item 10)**			$
12. **Less: Agency Commission Paid (not to exceed 15% of Item 11) [Lic. ¶ 5B]**			
13. **Net Receipts from Sponsors [Lic. ¶ 5B] (Item 11 less Item 12)**			$
14. **Less: 15% Sales Commission [Lic. ¶ 5C]**			
15. **Net Receipts from Sponsors after Deductions [Lic. ¶ 5D] (Item 13 less Item 14)**			$
16. **Commercial Fee [Lic. ¶s 5A2, 6D]:**			
Station's Basic Net Receipts— ____% of Item 15	$ ____ @2.0%		
Station's Increment— ____% of Item 15	$ ____ @1.0%		$
Total	$		
17. **Sustaining Fee [Lic. ¶ 5A1]**			
18. **Total Amount Due**			$

* All revenue must be reported on this line including "total Sale of station time" (FCC Form 324, Schedule I, line 11) plus "total incidental broadcast revenues" (FCC Form 324, Schedule I, line 18) plus all commissions, if any, deducted in reporting these amounts.

Report for the period from _____ **through** _____

FOR ASCAP USE ONLY

Checked by _____

Check Number _____

Am't of Check $ _____

Station _____ **Located at:** _____

Operated by: _____

(by) _____

SCHEDULE II

STATEMENT OF ACCOUNT E 332

INDEPENDENT STATION
OPTIONAL STANDARD DEDUCTION

1. Gross Revenue (include all billings and bad debt recoveries)* [Lic. ¶ 5D; Ltr. ¶s 1, 5] ..... $_____

2. Adjustments for Revenue Items:
   a. Add: Reportable Revenue not included in line 1 above [Lic. Par. 5D; Ltr. Pars. 1, 3, 4] ..... $_____
   b. Deduct: Revenue not Reportable included in line 1 above [Ltr. Pars. 1, 3] ..... _____ _____
   $_____

3. Total Gross Revenue (Item 1 plus Item 2) .....

4. Less: Network Revenue:
   a. Revenue Received from Regular National Television Networks [Lic. ¶ 2E; Ltr. ¶ 2] ..... _____
   b. Revenue Received from Occasional Networks Licensed by Society at the Source [Lic. ¶ 2F; Ltr. ¶ 2] ..... _____
   c. Gross Revenue from Sale of Cooperative Programs [Lic. ¶ 5H] _____ _____
   $_____

5. Total Gross Local Revenue (Item 3 less Item 4) .....

6. Less:
   a. Gross Political Revenue [Lic. ¶ 5I] ..... $_____
   b. Bad Debts Written Off [Lic. ¶ 7C; Ltr. ¶ 5] ..... _____
   c. Rate Card Discounts [Lic. ¶ 5D] ..... _____
   d. Revenue from Local Programs Licensed by Society at the Source [Lic. ¶ 5J] ..... _____ _____
   $_____ $_____

7. Sub-Total (Item 5 less Item 6) .....

8. Less: Revenue Received from Occasional Networks Not Licensed at the Source [Ltr. ¶s 2a, 9c] ..... _____

9. Balance Subject to Optional Standard Deduction (Item 7 less Item 8) .. $_____

10. Less: Optional Standard Deduction [Ltr. ¶ 9]:
    a. Revenue Attributable to Remote Programs [Ltr. ¶ 9b(i)] $_____ @37½% $_____
    b. Revenue Attributable to Live Programs [Ltr. ¶ 9b(ii)] .... $_____ @32½% _____
    c. Revenue Attributable to Local Sale of Occasional Network Announcements [Ltr. ¶9b(iii)] $_____ @10% _____
    d. Other Revenue [Ltr. ¶ 9b(iv)] $_____ @25% _____ _____
    e. Total (not to exceed Item 9) $_____

11. Total Revenue from Sale of Local Broadcasting Facilities (Item 7 less Item 10) ..... $_____

12. Less: Agency Commission Paid (not to exceed 15% of Item 11) [Lic. ¶ 5B] ..... _____

13. Net Receipts from Sponsors [Lic. ¶ 5B] (Item 11 less Item 12) ..... $_____

14. Less: 15% Sales Commission [Lic ¶ 5C] ..... _____

15. Net Receipts from Sponsors after Deductions [Lic. ¶ 5D] (Item 13 less Item 14) ..... $_____

16. Commercial Fee [Lic. ¶s 5A2, 6D]:
    Station's Basic Net Receipts—
    ____% of Item 15 ..... $_____ @2.0% _____
    Station's Increment—
    ____% of Item 15 ..... $_____ @1.0% _____ $_____
    Total $_____

17. Sustaining Fee [Lic. ¶ 5A1] ..... _____

18. Total Amount Due ..... $_____

* All revenue must be reported on this line including "total Sale of station time" (FCC Form 324, Schedule I, line 11) plus "total incidental broadcast revenues" (FCC Form 324, Schedule I, line 18) plus all commissions, if any, deducted in reporting these amounts.

Report for the period from _____ through _____

FOR ASCAP USE ONLY

Checked by _____

Check Number _____

Am't of Check $ _____

Station _____ Located at: _____

Operated by: _____

(by) _____

SCHEDULE III

STATEMENT OF ACCOUNT E 333

AFFILIATED STATION ITEMIZED DEDUCTIONS

1. Gross Revenue (include all billings and bad debt recoveries)* [Lic. ¶ 5D; Ltr. ¶s 1, 5] ..... $_____

2. Adjustments for Revenue Items:
   a. Add: Reportable Revenue not included in line 1 above [Lic. Par. 5D; Ltr. Pars. 1, 3, 4] ..... $_____
   b. Deduct: Revenue not Reportable included in line 1 above [Ltr. Pars. 1, 3] ..... _____ _____

3. Total Gross Revenue (Item 1 plus Item 2) ..... $_____

4. Less: Network Revenue:
   a. Revenue Received from Regular National Television Networks [Lic. ¶ 2E; Ltr. ¶ 2] ..... $_____
   b. Revenue Received from Occasional Networks Licensed by Society at the Source [Lic. ¶ 2F; Ltr. ¶ 2] ..... _____
   c. Gross Revenue from Sale of Cooperative Programs [Lic. ¶ 5H] _____ _____

5. Total Gross Local Revenue (Item 3 less Item 4) ..... $_____

6. Less:
   a. Gross Political Revenue [Lic. ¶ 5I] ..... $_____
   b. Bad Debts Written Off [Lic. ¶ 7C; Ltr. ¶ 5] ..... _____
   c. Rate Card Discounts [Lic. ¶ 5D] ..... _____
   d. Revenue from Local Programs Licensed by Society at the Source [Lic. ¶ 5J] ..... _____ _____

7. Sub-Total (Item 5 less Item 6) ..... $_____

8. Itemized Deductions:
   a. Film [Lic. ¶ 5G1; Ltr. ¶ 6] ... (80% of $_____) $_____
   b. Talent [Lic. ¶ 5G2; Ltr. ¶ 7] ..... _____
   c. Broadcast Rights [Lic. ¶ 5G3] ..... _____
   d. Remote Lines [Lic. ¶ 5G4] ..... _____
   e. Prizes [Lic. ¶ 5G5] ..... _____
   f. Outside News Service [Lic. ¶ 5G6] ..... (80% of $_____) _____
   Total Itemized Deductions ..... _____

9. Total Revenue from the Sale of Local Broadcasting Facilities (Item 7 less Item 8) ..... $_____

10. Less: Agency Commission Paid (not to exceed 15% of Item 9) [Lic. ¶ 5B] ..... _____

11. Net Receipts from Sponsors [Lic. ¶ 5B] (Item 9 less Item 10) ..... $_____

12. Less: 15% Sales Commission [Lic. ¶ 5C] ..... _____

13. Net Receipts from Sponsors after Deductions [Lic. ¶ 5D] (Item 11 less Item 12) ..... $_____

14. Commercial Fee [Lic. ¶s 5A2, 6D]:
   Station's Basic Net Receipts—
   ____% of Item 13 ..... $_____ @2.0% _____
   Station's Increment—
   ____% of Item 13 ..... $_____ @1.0% _____ $_____
   Total $_____

15. Sustaining Fee [Lic. ¶ 5A1] ..... _____

16. Total Amount Due ..... $_____

* All revenue must be reported on this line including "total Sale of station time" (FCC Form 324, Schedule I, line 11) plus "total incidental broadcast revenues" (FCC Form 324, Schedule I, line 18) plus all commissions, if any, deducted in reporting these amounts.

Report for the period from _____ through _____

FOR ASCAP USE ONLY

Checked by _____

Check Number _____

Am't of Check $ _____

Station _____ Located at: _____

Operated by: _____

(by) _____

E 334

SCHEDULE IV

STATEMENT OF ACCOUNT

INDEPENDENT STATION
ITEMIZED DEDUCTIONS

1. Gross Revenue (include all billings and bad debt recoveries)* [Lic. ¶ 5D; Ltr. ¶s 1, 5]			$
2. Adjustments for Revenue Items:			
a. Add: Reportable Revenue not included in line 1 above [Lic. Par. 5D; Ltr. Pars. 1, 3, 4]	$		
b. Deduct: Revenue not Reportable included in line 1 above [Ltr. Pars. 1, 3]			
3. Total Gross Revenue (Item 1 plus Item 2)			$
4. Less: Network Revenue:			
a. Revenue Received from Regular National Television Networks [Lic. ¶ 2E; Ltr. ¶ 2]	$		
b. Revenue Received from Occasional Networks Licensed by Society at the Source [Lic. ¶ 2F; Ltr. ¶ 2]			
c. Gross Revenue from Sale of Cooperative Programs [Lic. ¶ 5H]			
5. Total Gross Local Revenue (Item 3 less Item 4)			$
6. Less:			
a. Gross Political Revenue [Lic. ¶ 5I]	$		
b. Bad Debts Written Off [Lic. ¶ 7C; Ltr. ¶ 5]			
c. Rate Card Discounts [Lic. ¶ 5D]			
d. Revenue from Local Programs Licensed by Society at the Source [Lic. ¶ 5J]			
7. Sub-Total (Item 5 less Item 6)	$		$
8. Itemized Deductions:			
a. Film [Lic. ¶ 5G1; Ltr. ¶ 6] ...(80% of $_____)	$		
b. Talent [Lic. ¶ 5G2; Ltr. ¶ 7]			
c. Broadcast Rights [Lic. ¶ 5G3]			
d. Remote Lines [Lic. ¶ 5G4]			
e. Prizes [Lic. ¶ 5G5]			
f. Outside News Service [Lic. ¶ 5G6] ...(80% of $_____)			
g. 5% of Revenue Attributable to Locally Produced Remote Programs [Ltr. ¶ 8] ...(5% of $_____)			
Total Itemized Deductions			
9. Total Revenue from the Sale of Local Broadcasting Facilities (Item 7 less Item 8)			$
10. Less: Agency Commission Paid (not to exceed 15% of Item 9) [Lic. ¶ 5B]			
11. Net Receipts from Sponsors [Lic. ¶ 5B] (Item 9 less Item 10)			$
12. Less: 20% Sales Commission [Lic. ¶ 5C]			
13. Net Receipts from Sponsors after Deductions [Lic. ¶ 5D] (Item 11 less Item 12)			$
14. Commercial Fee [Lic. ¶s 5A2, 6D]:			
Station's Basic Net Receipts— ____% of Item 13 ... $_____ @2.0%			
Station's Increment— ____% of Item 13 ... $_____ @1.0%			$
Total $_____			
15. Sustaining Fee [Lic. ¶ 5A1]			
16. Total Amount Due			$

* All revenue must be reported on this line including "total Sale of station time" (FCC Form 324, Schedule I, line 11) plus "total incidental broadcast revenues" (FCC Form 324, Schedule I, line 18) plus all commissions, if any, deducted in reporting these amounts.

Report for the period from _____ through _____

FOR ASCAP USE ONLY

Checked by_____

Check Number_____

Am't of Check $_____

Station_____ Located at:_____

Operated by: _____

(by)_____

E 335

AMERICAN SOCIETY OF COMPOSERS, AUTHORS AND PUBLISHERS

LOCAL STATION PER PROGRAM TELEVISION LICENSE AGREEMENT

Licensee: _____

Station: _____

Location: _____

_____

AGREEMENT made between AMERICAN SOCIETY OF COMPOSERS, AUTHORS AND PUBLISHERS (herein referred to as "SOCIETY") and

(herein referred to as "LICENSEE")

as follows:

1. A. SOCIETY grants to LICENSEE and LICENSEE accepts for a period commencing as of
and ending December 31, 1973 a license to perform publicly by television broadcasting on LICENSEE's local television programs from Television Station

located at

(herein referred to as "the Station") non-dramatic performances of the separate musical compositions heretofore copyrighted, composed or written by those members of SOCIETY listed in Schedule "A" attached hereto (as the same may be augmented from time to time) and now or hereafter during the term hereof in the repertory of SOCIETY, or hereafter during the term hereof copyrighted, composed or written by such members of SOCIETY, or of which SOCIETY shall have the right to license such performing rights. As additional members of SOCIETY hereafter grant to SOCIETY the right to license performances by means of television broadcasting, such additional members will be added to those listed in Schedule "A" as of the date upon which SOCIETY acquires such rights.

B. This license does not extend to or include the public performance by television broadcasting or otherwise of any rendition or performance of (a) any opera, operetta, musical comedy, play or like production, as such, in whole or in part, or (b) any composition from any opera, operetta, musical comedy, play or like production (whether or not such opera, operetta, musical comedy, play or like production was presented on the stage or in motion picture form) in a manner which recreates the performance of such composition with substantially such distinctive scenery or costume as was used in the presentation of such opera, operetta, musical comedy, play or like production (whether or not such opera, operetta, musical comedy, play or like production was presented on the stage or in motion picture form); provided, however, that the rights granted to LICENSEE under this agreement shall be deemed to include a grant of the right to make non-dramatic perform-

ances of compositions licensed hereunder by the television broadcasting of a motion picture containing such compositions if the rights in such motion picture other than those licensed under this agreement have been obtained from the parties in interest.

Nothing herein contained shall be deemed to license the public performance by television broadcasting of dramatic performances. Any performance of a separate musical composition which is not a dramatic performance, as defined herein, shall be deemed to be a non-dramatic performance. For the purposes of this agreement, a dramatic performance shall mean a performance of a musical composition on a television program in which there is a definite plot depicted by action and where the performance of the musical composition is woven into and carries forward the plot and its accompanying action. The use of dialogue to establish a mere program format or the use of any non-dramatic device merely to introduce a performance of a composition shall not be deemed to make such performance dramatic.

The definition of the terms "dramatic" and "non-dramatic" performances contained in this Sub-paragraph "1B" are purely for the purposes of this agreement and for the term thereof and shall not be binding upon or prejudicial to any position taken by either of the parties subsequent to the expiration thereof or for any purpose other than this agreement.

C. Except as expressly herein otherwise provided, nothing herein contained shall be construed as authorizing LICENSEE to grant to others any right to reproduce or perform publicly for profit by any means, method or process whatsoever, any of the musical compositions licensed hereunder or as authorizing any receiver of any television broadcast to perform publicly or reproduce the same for profit, by any means, method or process whatsoever.

2. A. "Local television program" as used in this agreement shall be deemed to mean a program, whether or not such program shall include visual material, broadcast from the Station other than a network television program. The performances licensed hereunder may originate at the Station or at any other place whether or not such other place is licensed to perform publicly for profit the compositions licensed hereunder, regardless of the manner, means, or method of such origination; but nothing herein contained shall be deemed to grant a license

to such place itself (or to the parties responsible for the performance therein) for the public performance for profit in such place of any such compositions.

B. "Local commercial television program" as used in this agreement shall be deemed to mean any local television program in connection with which a sponsor pays directly or indirectly for the use of the television broadcasting facilities of the Station. For the purpose of this agreement, a particular period of television broadcasting shall be considered one program if, with respect to such period, any two of the following questions may be answered in the affirmative:

(1) Is the period referred to by substantially the same title throughout?

(2) Is the dominant personality the same substantially throughout?

(3) Is the period presented to the public as a single show notwithstanding that it may have different parts?

(4) Is the format substantially constant throughout?

A local commercial television program shall be deemed to include all announcements broadcast at any time following the commencement and or to the conclusion of a program, including announcements between two consecutive segments of a program if

(a) either of such segments is sold on an announcement basis or participating basis; or

(b) both such segments are sold to the same sponsor; or

(c) neither of such segments is sold on any basis;

but shall be deemed to exclude an announcement broadcast between two separate consecutive segments (each of not less than 15 minutes' duration) of one local television program (other than film produced originally for exhibition in motion picture theatres and first distributed to and exhibited in such theatres) if (a) each of such two separate consecutive segments is sold to a separate single sponsor or (b) one of such two separate consecutive segments is sold to a single sponsor and the other segment is not sold on any basis, and if such announcement does not include, in whole or in part, any musical composition licensed hereunder.

C. "Local sustaining television program" as used in this agreement shall be deemed to mean any local television program other than a local commercial television program.

D. "Network television program" as used in this agreement shall be deemed to mean a program, whether or not such program shall include visual material, broadcast simultaneously or by so-called "delayed" or "repeat" broadcasts (sometimes known as "rebroadcasts") over two or more affiliated stations.

E. "Affiliated station" as used in this agreement shall be deemed to mean any television broadcasting station in the United States which regularly broadcasts network television programs of a television network or which appears on the television rate cards of such network and which (a) is interconnected with such network by co-axial cable, wire, television relay or any other means whatsoever, or (b) pending the availability of such means of interconnecting the station with such network at an expenditure which is not unreasonable in comparison with the cost of interconnecting such network's other affiliated stations, is a party to a non-interconnected affiliation agreement with such network. Such station shall only be deemed to be an affiliated station so long as it regularly broadcasts such programs or appears on such rate cards, as the case may be. All television broadcasting stations in the United States which are owned and operated by a network and which broadcast such network's television programs shall be deemed to be affiliated stations for the purposes of this agreement, whether or not they appear on such network's television rate cards.

3. A. The members of SOCIETY shall have the right, at any time and from time to time, in good faith, to restrict the television broadcasting of compositions from musical comedies, operas, operettas and motion pictures, or any other composition being excessively broadcast, only for the purpose of preventing harmful effect upon such musical comedies, operas, operettas, motion pictures or compositions, in respect of other interests under the copyrights thereof; provided, however, that the maximum number of compositions which may be at any time thus restricted shall not exceed 750 and moreover that limited licenses will be granted upon application to SOCIETY entirely free of additional charge as to restricted compositions, if and when the copyright owners thereof are unable to show reasonable hazards to their major interests

likely to result from such television broadcasting; and provided further that such right to restrict any such composition shall not be exercised for the purpose of permitting the fixing or regulating of fees for the recording or transcribing of such composition; and provided further that in no case shall any charges, "free plugs", or other consideration be required in respect of any permission granted to perform a restricted composition; and provided further that in no event shall any composition, after the initial television broadcast thereof, be restricted for the purpose of confining further television broadcasts thereof to a particular artist, station, network or program.

B. SOCIETY reserves the further right, at any time and from time to time, in good faith, to restrict the television broadcasting of any compositions as to which any suit has been brought or threatened on a claim that such composition infringes a composition not contained in the repertory of SOCIETY or on a claim by a non-member of SOCIETY or by a member not listed in Schedule "A", as the same may be augmented from time to time, that SOCIETY does not have the right to license the public performance of such composition by television broadcasting.

4. A. In consideration of the license herein granted, LICENSEE agrees to pay to SOCIETY for each calendar month during each contract year during the term hereof the following:

(1) COMMERCIAL FEE: (a) 9% of its "net receipts from sponsors after deductions" on local commercial television programs of which any or all of the musical content shall include, in whole or in part, any musical composition licensed hereunder except those programs consisting of films produced originally for exhibition in motion picture theatres and first distributed to and exhibited in such theatres, and which make only incidental use in such films of any of the compositions licensed hereunder as provided in subdivision "(b)" of this Sub-paragraph "4A(1)".

(b) 4% of its "net receipts from sponsors after deductions" on local commercial television programs consisting of films produced originally for exhibition in motion picture theatres and first distributed to and exhibited in such theatres, and which make only incidental use in such films of any of the compositions licensed hereunder in the following manner: as instrumental bridge, cue or background music only.

The term "net receipts from sponsors after deductions on local commercial television programs" as used in this Sub-paragraph "4A(1)" shall include net receipts from sponsors after deductions on announcements included in such programs as described in Sub-paragraph "2B" of this agreement.

(2) SUSTAINING FEE: For each of its local sustaining television programs of which any or all of the musical content shall include, in whole or in part, any musical composition licensed hereunder, a sum equal to 3½% of the Station's full television card rate as published in Standard Rate and Data applicable to a single local commercial television program for the time when such local sustaining television program shall be broadcast, subject to the following deductions:

(a) Rate card discounts, if any, which would normally be actually allowed to sponsors for such period of time.

(b) Advertising agency commission not to exceed 15% if normally actually allowed to recognized advertising agencies not owned or controlled by LICENSEE.

(c) A sales commission equal to 15% of the amount remaining after items "(a)" and "(b)" of this Sub-paragraph "4A(2)" are deducted therefrom;

provided that in no event shall the license fees payable under this Sub-paragraph "4A(2)" for any contract year during the term hereof exceed a sum equal to twelve times the highest quarter-hour card rate of the Station for a single quarter-hour of television broadcasting. In the event that the license fees paid to SOCIETY under this Sub-paragraph "4A(2)" for any contract year during the term hereof shall exceed a sum equal to twelve times such highest quarter-hour card rate, a final adjustment shall be made within 30 days after the end of such contract year and SOCIETY shall refund to LICENSEE the difference between (a) the license fees paid to SOCIETY under this Sub-paragraph "4A(2)" for such contract year and (b) such sum equal to twelve times such highest quarter-hour card rate.

For the purpose of this Sub-paragraph "4A", the fee with respect to an announcement which includes, in whole or in part, any musical composition licensed hereunder—but with respect to which no payment

would have been required under Sub-paragraph "4G" of this agreement if such announcement did not include, in whole or in part, any musical composition licensed hereunder—will be computed as provided above with respect to "Commercial Fee" and "Sustaining Fee" respectively, as the case may be.

B. The term "net receipts from sponsors" as used in this agreement shall be deemed to mean the gross amount paid for the use of television broadcasting facilities of the Station for LICENSEE's local commercial television programs, as defined herein, less any advertising agency commission not to exceed 15% actually allowed to a recognized advertising agency not owned or controlled by LICENSEE.

C. The term "net receipts from sponsors after deductions" as used in this agreement shall be deemed to mean net receipts from sponsors, less a sales commission on the net receipts from sponsors equal to 15% of such net receipts.

D. The term "gross amount paid for the use of television broadcasting facilities of the Station for LICENSEE's local commercial television programs" as used in this agreement shall be deemed to mean all payments made (whether in money or in any other form) by or on behalf of the sponsor of each program for the use of the television broadcasting facilities of the Station for local commercial television programs, after deducting only rate card discounts, quantity and/or frequency, actually allowed, and whether such payment shall have been made directly to LICENSEE or to any other persons, firms or corporations. Where merchandise, services or any thing or service of value is received in lieu of cash consideration for the use of the television broadcasting facilities of the Station, the same shall be described and the reasonable value thereof determined and accounting made to SOCIETY upon the same basis as if a regular billing had been made by LICENSEE therefor in a sum equal to such reasonable value which in no event shall be deemed to exceed LICENSEE's prevailing published card rate for such television broadcasting facilities.

E. No payment shall be required hereunder with respect to bona fide charges for the use of facilities furnished by LICENSEE to sponsors other than for time on the air, as such, provided:

(a) that such charges are itemized separately when billed to the sponsors or their advertising agencies; and

(b) that such charges are in addition to LICENSEE's published applicable card rate (less applicable rate card discounts, quantity and/or frequency, actually allowed) for the use of LICENSEE's television broadcasting facilities (i. e., time on the air) for the actual broadcast.

For the purpose of this Sub-paragraph "4E", there shall be included in the term "LICENSEE's published applicable card rate (less applicable rate card discounts, quantity and/or frequency, actually allowed) for the use of LICENSEE's television broadcasting facilities (i. e., time on the air) for the actual broadcast" charges for facilities normally required at LICENSEE's station as a bona fide minimum for the television broadcast of a live studio program or a film program, as the case may be, excluding bona fide charges for rehearsal provided that they comply with the requirements of subdivisions "(a)" and "(b)" of this Sub-paragraph "4E".

F. Co-operative programs are programs which are furnished by a network to its affiliated stations under an arrangement permitting an affiliate to broadcast such programs on a sustaining basis or on a commercial basis under the sponsorship of a local, regional or national advertiser contracting directly with such affiliated station or its representative for the incorporation of the commercial credits of such advertiser into the program as broadcast by such affiliated station. For the purposes of this agreement only, and without prejudice to the position of SOCIETY or LICENSEE or any network of which LICENSEE is an affiliated station as to the status of co-operative programs under SOCIETY's non-visual broadcasting licenses, such co-operative television programs shall be deemed to be "network television programs" as defined herein.

G. No payment shall be required hereunder with respect to any sums received from an announcement

(1) which is broadcast before the start or after the completion of any television program, or

(2) which interrupts a network television program broadcast by a network licensed by SOCIETY provided the interruption is to allow identification of the network and local station in accordance with generally prevailing national network practices, or

(3) which is broadcast between two separate consecutive segments (each of not less than 15 minutes' duration) of one local television program (other than film produced originally for exhibition in motion picture theatres and first distributed to and exhibited in such theatres) if (a) each of such two separate consecutive segments is sold to a separate single sponsor or (b) one of such two separate consecutive segments is sold to a single sponsor and the other segment is not sold on any basis,

provided that such announcement does not include, in whole or in part, any musical composition licensed hereunder.

H. No payment shall be required hereunder with respect to any sums received from political local television programs of LICENSEE.

I. No payment shall be required hereunder with respect to a local commercial or sustaining television program of LICENSEE presented by motion picture or by transcription if a license has been granted at the source to perform the musical compositions embodied in such motion picture or transcription on said program of LICENSEE by means of television broadcasting of such motion picture or such transcription by (a) SOCIETY, or (b) the composer(s), author(s) and publisher(s) of such musical compositions, and LICENSEE shall have given SOCIETY notice in writing of such license at the source and the terms thereof (including the title of the motion picture, the name of the producer and the music cue sheet of such motion picture listing the composer(s), author(s) and publisher(s) of each musical composition embodied therein) at least seven days prior to LICENSEE's television broadcast of said program.

J. If any local television program of LICENSEE produced solely for broadcasting purposes is presented in a studio, auditorium or hall where an audience is admitted free of charge, or where the entire admittance charge is paid to an eleemosynary institution which shall request a gratuitous license from SOCIETY, no additional royalties or fees shall be charged by reason of the presence of such audience.

5. A. LICENSEE shall furnish to SOCIETY postage prepaid on or before the 20th day of each month during the term hereof covering the period of the preceding calendar month:

(1) A copy of the complete television log for each day in the form required by Federal Communications Commission Rules and Regulations, and,

(2) As to each local television program listed on such logs as musical or which has any musical content, regardless of the origination of the program, statements on forms supplied gratis by SOCIETY setting forth a complete item by item list of each musical composition rendered, in whole or in part, during each such program, and showing with respect to each such program:

(a) the date of rendition; (b) the title of the program; (c) the time rendered; (d) as to each musical composition rendered on such programs, the full title thereof, the name of the composer and author, and the name of the copyright owner as imprinted on the published sheet of music or orchestration, it being understood that titles may not be abbreviated but must be shown in full; (e) as to each musical composition, a brief notation of the scenery and costumes used, if any; (f) as to each local commercial television program, the name of each sponsor thereof and as to each such sponsor the gross amount paid for the use of the television broadcasting facilities of the Station for LICENSEE's local commercial television programs, and also showing all deductions in order to arrive at "net receipts from sponsors" and "net receipts from sponsors after deductions" as herein provided, without exception, and the percentage thereof payable to SOCIETY; and (g) as to each local sustaining television program, the Station's full television card rate as published in Standard Rate and Data applicable to a single local commercial television program for the time when such local sustaining television program shall have been broadcast, and all deductions applicable thereto. Said statements shall be accompanied by remittance due SOCIETY under the terms hereof.

B. At the request of SOCIETY, LICENSEE will furnish to SOCIETY the dialogue, if any, used in specified programs. SOCIETY will only ask for dialogue where it is reasonably necessary for its purposes. In cases where dialogue is only available in recorded form it will be sufficient for LICENSEE to permit SOCIETY to screen the recording. When the dialogue is available in written form in any of the cities where SOCIETY has an office and it is inconvenient for LICENSEE to make an additional copy, it will be sufficient if LICENSEE permits a representative of SOCIETY to examine the file copy of the dialogue at LICENSEE's office. LICENSEE will have no obligation to furnish SOCIETY with dialogue in cases where it does not have within its control either a written or recorded version of the dialogue.

C. With respect to motion pictures broadcast from or through the Station on LICENSEE's local television programs, the requirement of subdivision "(d)" of Sub-paragraph "5A(2)" shall be deemed to have been complied with if LICENSEE shall identify the motion picture for SOCIETY by its title, the name of the producer where available, and the copyright notice contained therein where available, and if LICENSEE shall furnish the customary music cue sheet of such motion picture.

D. Any failure of LICENSEE to comply with the requirements set out in this Paragraph "5" as to the complete identification of compositions performed on local television programs shall create the presumption that the music and/or compositions used were compositions in the repertory of SOCIETY. Anything to the contrary herein notwithstanding, this license shall not extend to or include compositions wholly unreported in such statements.

6. Accounting and payments shall be made on a billing basis with the right of deduction or rebate for bad accounts and discounts allowed or rebates paid. All billings made subsequent to the termination of this agreement with respect to local television broadcasts made during the term hereof shall be accounted for by LICENSEE as and when such billings are made by LICENSEE.

7. SOCIETY shall have the right, by its duly authorized representatives at any time during customary business hours, to examine the books and records of account (including logs and all other records, relating to the music and/or compositions performed on local programs of the Station) of LICENSEE only to such extent as may be necessary to verify (a) any statement of accounting required pursuant hereto, and (b) any statement of accounting to SOCIETY required of a network in connection with co-operative television programs made available to LICENSEE by such network. SOCIETY shall consider all data and information coming to its attention as a result of any such examination of books and records as completely and entirely confidential.

8. Upon any breach or default by LICENSEE of any terms herein contained relating to the reports, accountings or payments required to be made by LICENSEE, SOCIETY may give LICENSEE thirty (30) days' notice in writing to cure such breach or default, and in the event that such breach or default has not been cured within said thirty (30) days, SOCIETY may then promptly terminate this license.

9. A. SOCIETY agrees to indemnify, save and hold LICENSEE, its sponsors and their advertising agencies, its and their artists, and each of them harmless, and defend LICENSEE, its sponsors and their advertising agencies, its and their artists, and each of them from and against any claim, demand or suit that may be made or brought against them or any of them with respect to performances given on LICENSEE's local television programs during the term hereof in accordance with this license of (a) "cleared compositions", or (b) musical compositions heretofore copyrighted, composed or written by members of SOCIETY listed in Schedule "A" as augmented from time to time and now or hereafter during the term hereof in the repertory of SOCIETY, or (c) musical compositions hereafter during the term hereof copyrighted, composed or written by such members of SOCIETY, or (d) musical compositions which SOCIETY shall hereafter certify in writing to LICENSEE as musical compositions copyrighted, composed or written by such members of SOCIETY and included in SOCIETY's repertory for the purposes of this agreement, or (e) musical compositions "deemed to be included in the repertory of SOCIETY" in accordance with the provisions of Sub-paragraph "9C". In the event of the service upon LICENSEE of any notice, process, paper or pleading under which a claim, demand or action is made or begun against LICENSEE on account of any such matter as is hereinabove referred to, LICENSEE shall promptly give SOCIETY written notice thereof and simultaneously therewith deliver to SOCIETY any such notice, process, paper or pleading, or a copy thereof, and SOCIETY at its own expense shall have sole charge of the defense of any such action or proceeding. LICENSEE, however, shall have the right to engage counsel of its own, at its own expense, who may participate in the defense of any such action or proceeding and with whom counsel for SOCIETY shall cooperate. LICENSEE shall cooperate with SOCIETY in every way in the defense of any such action or proceeding, and in any appeals that may be taken from any judgments or orders entered therein, and shall execute all pleadings, bonds or other instruments, but at the sole expense of SOCIETY, that may be required in order properly to defend and resist any such action or proceeding, and prosecute any appeals taken therein. In the event of the service upon LICENSEE of any notice, process, paper or pleading under which a claim, demand or action is made or begun against LICENSEE on account of the performance on LICENSEE's local television programs of any musical composition (other than a "cleared composition") contained in the

repertory of SOCIETY but not heretofore or hereafter during the term hereof copyrighted, composed or written by members of SOCIETY and not certified by SOCIETY as a musical composition copyrighted, composed or written by members of SOCIETY, SOCIETY agrees at the request of LICENSEE to cooperate with and assist LICENSEE in the defense of any such action or proceeding, and in any appeals that LICENSEE may elect to take from any judgments or orders entered therein.

B. As used in this Paragraph "9", a "cleared composition" shall mean any composition in the repertory of SOCIETY, not copyrighted, composed or written by a member of SOCIETY, which SOCIETY shall have notified LICENSEE is a composition with respect to which SOCIETY is willing to indemnify LICENSEE, provided that the performance of such composition shall be made on the specific local television program of LICENSEE for which a clearance shall have been given by SOCIETY; provided further, however, that in the event that SOCIETY notifies LICENSEE in writing that it is willing to clear such a composition without limitation to a specific program, such composition shall thereafter be regarded as a "cleared composition" until such time as SOCIETY shall rescind such clearance.

C. For the purpose of this Paragraph "9" only, any musical composition (other than a musical composition or group of musical compositions expressly excepted therefrom or that may be restricted because of the operation of Paragraph "3" hereof) which is listed in the bound volumes entitled "ASCAP Index 1963", as the same may have been revised heretofore or as the same may be hereafter be revised, as a musical composition heretofore copyrighted by a present member of SOCIETY listed in Schedule "A" as such list of present members may be augmented from time to time shall be deemed to be included in the repertory of SOCIETY. SOCIETY shall have the right to make reasonable revisions in such Indices from time to time, provided, however, that no such revision and no exception referred to above shall be effective as to any broadcast of LICENSEE's local programs made, or delayed or repeat broadcasts thereof scheduled, prior to the date on which LICENSEE shall have received notice of such revision or exception. Nothing in this Sub-paragraph "9C" shall be deemed to limit LICENSEE's rights or to limit or affect LICENSEE's obligations to pay the license fees payable under this Agreement or to limit SOCIETY's obligations to indemnify as provided in Sub-paragraph "9A".

D. The provisions contained in Paragraph "9" shall apply to LICENSEE's sponsors and their advertising agencies, and its or their artists, as to LICENSEE's local television programs with the same effect as if in each instance there had been added to "LICENSEE" the words "its sponsors and their advertising agencies, its and their artists, and each of them".

10. SOCIETY agrees during the term hereof to maintain for the service of LICENSEE substantially SOCIETY's present repertory of compositions copyrighted, composed or written by present members of SOCIETY listed in Schedule "A" as such list of present members may be augmented from time to time. In case there shall be a substantial diminution, by reason of action by SOCIETY or any such members, in the use which LICENSEE may make of compositions copyrighted, composed or written by such members of SOCIETY as compared to the use which LICENSEE customarily has been permitted to make of such compositions prior to the actual execution of this agreement or in case there shall be a substantial diminution in SOCIETY's present repertory of compositions copyrighted, composed or written by present members of SOCIETY listed in Schedule "A" as such list of present members may be augmented from time to time, LICENSEE may give SOCIETY thirty (30) days' notice in writing to cure such substantial diminution. In the event that such substantial diminution in use or repertory has not been cured within said thirty (30) days, LICENSEE may then promptly terminate this agreement. If LICENSEE does not so terminate, LICENSEE shall have the right to obtain a reduction, as hereinafter provided, in the percentage payable on its "net receipts from sponsors after deductions" proportionate to such substantial diminution in use or reportory.

In the event that (a) such a substantial diminution in use or repertory shall have occurred and LICENSEE shall have notified SOCIETY thereof, and (b) SOCIETY shall not have cured such diminution within thirty (30) days thereafter, and (c) SOCIETY and LICENSEE shall be unable to agree within such thirty (30) days either as to the existence of such a diminution as would justify a decrease in the license fees payable hereunder or as to the appropriate reduction in the percentage payable on LICENSEE's "net receipts from sponsors after deductions" by reason of such diminution, and (d) LICENSEE shall not have terminated this agreement as herein provided, the controversy shall be determined by arbitration as herein provided.

In the event that such a substantial diminution in use or repertory shall have been determined to exist as herein provided and thereafter SOCIETY shall have cured such diminution, SOCIETY shall have the right to obtain, as herein provided, the restoration of any reduction theretofore made in the license fees payable under this agreement by reason of such diminution. In the event that SOCIETY shall notify LICENSEE that in SOCIETY's opinion any substantial diminution in use or repertory shall have been cured and within thirty (30) days thereafter SOCIETY and LICENSEE shall be unable to agree as to whether or not such diminution shall have been cured, the controversy shall be determined by arbitration as herein provided.

Any award of the arbitrators with respect to any controversy submitted to arbitration under this Paragraph "10" and reducing or restoring the percentage payable by LICENSEE hereunder shall be effective as of whichever shall be the later of (a) the date on which LICENSEE or SOCIETY, as the case may be, shall have given the other notice of such substantial diminution in use or repertory or the curing thereof, or (b) the date, if any, which the arbitrators shall specify as the date on which such diminution occurred or was cured.

In case any controversy is to be determined by arbitration as provided above, such arbitration shall be conducted under and pursuant to the laws of the State of New York, in accordance with the provisions of Paragraph "11" hereof.

In case the arbitrators shall determine that there has been such a substantial diminution in use or repertory and shall make an award reducing the percentage payable by LICENSEE on its "net receipts from sponsors after deductions", the reduction in such percentage payable by LICENSEE made by such award shall in no event be greater than the participation in such percentage payments of the publisher member or members of SOCIETY whose catalogue or catalogues shall have been the subject of such substantial diminution in use or repertory. The participation of such publisher member or members in such percentage payments made by LICENSEE hereunder shall be deemed to be the same percentage of such payments by LICENSEE as the percentage which such publisher member's or members' income from SOCIETY in respect of television distribution for the year immediately preceding shall bear to the entire distribution of royalties in respect of television by SOCIETY to all of its publisher members during such year.

11. In the event that during the term of this agreement there is to be determined by arbitration hereunder whether there has been such a substantial diminution in use or repertory and, if so, the percentage by which the license fees payable hereunder shall be reduced by reason thereof, or whether a substantial diminution has been cured, as the case may be, as provided in Paragraph "10", each party shall on written notice to the other appoint an arbitrator within two (2) weeks after the expiration of the applicable thirty (30) day period specified in Paragraph "10" hereof.

In the event that within ten (10) days after the giving of such notice by one party, the other shall not by written notice appoint another arbitrator, then upon the written request of either party (or both) the person who is at the time performing the functions of President of the American Arbitration Association shall appoint the second arbitrator. When two arbitrators have been appointed they shall, if possible, agree upon a third arbitrator and shall appoint him by notice in writing, in triplicate, signed by both of them, one of which triplicate notices shall be given to each party hereto. If ten (10) days shall elapse after the appointment of the second arbitrator without notice of the appointment of the third arbitrator having been given, then upon the written request of either party (or both) the person who is at the time performing the functions of President of the American Arbitration Association shall appoint the third arbitrator. Upon appointment of the third arbitrator the three arbitrators shall hold a hearing and give opportunity to each party hereto to present his case in the presence of the other, and shall then make their award determining the license fees which shall be paid by LICENSEE to SOCIETY, taking into consideration all applicable factors which tend to determine whether there has been such a substantial diminution and, if so, the extent thereof and the percentage by which the license fees payable hereunder shall be reduced by reason thereof, or whether a substantial diminution has been cured, as the case may be, as provided in Paragraph "10". The arbitration shall be conducted in accordance with the rules of the American Arbitration Association then in effect.

The award of the majority of the arbitrators shall be binding upon the parties hereto, judgment may be entered thereon in any court having jurisdiction, and this agreement shall be deemed to be

modified accordingly. Such award shall include the fixing of the expenses of the arbitration, which shall be borne equally by both parties.

12. In the event of the termination or suspension of the governmental licenses covering the Station or any substantial alteration or variation of the terms and conditions thereof, or any major interference with the operations of the Station due to governmental measures or restrictions, LICENSEE shall have the right to terminate this agreement upon seven (7) days' notice.

13. This agreement and all the terms and conditions thereof shall be renewed and extended for all purposes for an additional period from January 1, 1974 through December 31, 1977 ("the additional period") unless either

A. LICENSEE gives SOCIETY written notice on or before December 31, 1972 that LICENSEE elects not to renew and extend the agreement for the additional period, or

B. SOCIETY gives LICENSEE written notice on or before February 28, 1973 that SOCIETY elects not to renew and extend the agreement for the additional period.

14. In the event of:

A. any major interference with the operations of SOCIETY in the state, territory, dependency, possession or political subdivision in which the station is located, by reason of any law of such state, territory, dependency, possession or political subdivision; or

B. any substantial increase in the cost to the SOCIETY of operating in such state, territory, dependency, possession or political subdivision, by reason of any law of such state, territory, dependency, possession or political subdivision, which is applicable to the licensing of performing rights,

SOCIETY shall have the right to apply to the United States District Court for the Southern District of New York for an order terminating this agreement.

15. The meaning of the provisions of this agreement shall be construed in accordance with the law of the State of New York.

16. All notices required or permitted to be given by either of the parties to the other hereunder shall be duly and properly given if mailed to such other party by registered United States mail addressed to such other party at its main office for the transaction of business.

17. This agreement shall enure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns, but no assignment shall relieve the parties hereto of their respective obligations hereunder as to performances broadcast, acts done and obligations incurred prior to the effective date of the assignment.

IN WITNESS WHEREOF, this agreement has been duly executed by SOCIETY and LICENSEE this day of , 19 , as of the day of , 19 .

AMERICAN SOCIETY OF COMPOSERS,
AUTHORS AND PUBLISHERS

By .....

.....
LICENSEE

By .....

CBS v. ASCAP

CX 2, Exhibit No. 15

Standard forms of ASCAP license agreements, preceding the current forms (CX 2, Ex. 14):

Title	Form No.
Local Station Blanket Radio License	3M-3-67
Local Station Program Sustaining License	160
Local Station Blanket Television License	1M-12-67
Local Station Per Program Television License	1000 Jan.1967(u)

3'

LOCAL STATION BLANKET RADIO LICENSE

E 355

Agreement made between AMERICAN SOCIETY OF COMPOSERS, AUTHORS AND PUBLISHERS (herein referred to as "SOCIETY") and

(herein referred to as "LICENSEE") as follows:

1. SOCIETY grants to LICENSEE and LICENSEE accepts for a period commencing as of

and ending , a license to perform publicly by radio broadcasting on LICENSEE'S local radio programs from Radio Station

located at

(herein referred to as "the Station") non-dramatic performances of the separate musical compositions heretofore copyrighted, composed or written by members of SOCIETY and now or hereafter during the term hereof in the repertory of SOCIETY, or hereafter during the term hereof copyrighted, composed or written by members of SOCIETY, or of which SOCIETY shall have the right to license such performing rights. This license does not extend to or include the public performance by radio broadcasting or otherwise of any rendition or performance of any opera, operetta, musical comedy, play or like production, as such, in whole or in part. Nothing herein contained shall be construed as authorizing LICENSEE to grant to others any right to reproduce or perform publicly for profit by any means, method or process whatsoever, any of the musical compositions licensed hereunder or as authorizing any receiver of any radio broadcast to perform publicly or reproduce the same for profit, by any means, method or process whatsoever.

2. A. "Local radio program" as used in this agreement shall be deemed to mean any program broadcast from the Station other than a network radio program. The performances licensed hereunder may originate at the Station or at any other place whether or not such other place is licensed to perform publicly for profit the compositions licensed hereunder, regardless of the manner, means, or method of such origination; but nothing herein contained shall be deemed to grant a license to such place itself (or to the parties responsible for the performance therein) for the public performance for profit in such place of any such compositions.

B. "Network radio program" as used in this agreement shall be deemed to mean a program broadcast simultaneously or by so-called "delayed" or "repeat" broadcasts (sometimes known as "rebroadcasts") over two or more affiliated stations.

C. "Affiliated station" as used in this agreement shall be deemed to mean any radio broadcasting station in the United States which regularly broadcasts network radio programs of a radio network or which appears on the radio rate cards of such network and which is interconnected with such network by wire or any other means whatsoever. Such station shall only be deemed to be an affiliated station so long as it regularly broadcasts such programs or appears on such rate cards, as the case may be. All radio broadcasting stations in the United States which are owned and operated by a network and which broadcast such network's radio programs shall be deemed to be affiliated stations for the purposes of this agreement, whether or not they appear on such network's radio rate cards.

3. LICENSEE agrees to furnish to SOCIETY upon request during the term of this agreement a list of all musical compositions (or, at the option of LICENSEE, a list of all musical compositions licensed hereunder) broadcast from or through the station on LICENSEE'S local radio programs, showing the title of each composition and the composer and author thereof; provided that LICENSEE shall not be obligated under this paragraph to furnish such a list covering a period or periods in the aggregate in excess of three months during any one calendar year.

4. A. The members of SOCIETY shall have the right, at any time and from time to time, in good faith, to restrict the radio broadcasting of compositions from musical comedies, operas, operettas and motion pictures, or any other composition being exclusively broadcast, only for the purpose of preventing harmful effect upon such musical comedies, operas operettas, motion pictures or compositions, in respect of other interests under the copyrights thereof; provided, however, that the maximum number of compositions which may be at any time thus restricted shall not exceed 500 and moreover that limited licenses will be granted upon application to SOCIETY entirely free of additional charge as to restricted compositions, if and when the copyright owners thereof are unable to show reasonable hazards to their major interests likely to result from such radio broadcasting; and provided further that such right to restrict any such composition shall not be exercised for the purpose of permitting the fixing or regulating of fees for the recording or transcribing of such composition; and provided further that in no case shall any charges, "free plugs", or other consideration be required in respect of any permission granted to perform a restricted composition; and provided further that in no event shall any composition, after the initial radio broadcast thereof, be restricted for the purpose of confining further radio broadcasts thereof to a particular artist, station, network or program.

B. SOCIETY reserves the further right, at any time and from time to time, in good faith, to restrict the radio broadcasting of any compositions, over and above the number specified in the previous paragraph, only as to which any suit has been brought or threatened on a claim that such composition infringes a composition not contained in the repertory of SOCIETY or on a claim that SOCIETY does not have the right to license the public performance of such composition by radio broadcasting.

5. A. In consideration of the license herein granted, LICENSEE agrees to pay to SOCIETY the following:

1. COMMERCIAL FEE: A sum equal to 2.125% of its "net receipts from sponsors after deduction".

2. SUSTAINING FEE: For each year during the term hereof,

a. 30 times the highest one-minute card rate of the Station for a single minute if it has net receipts from sponsors in excess of $150,000 per year for such year, or,

b. 24 times the highest one-minute card rate of the Station for a single minute if it has net receipts from sponsors between $50,000 and $150,000 per year for such year, or,

c. $12.00 if it has net receipts from sponsors of less than $50,000 per year for such year.

If such highest card rates change during any year, the annual sustaining fee of the Station shall be prorated accordingly. The "net receipts from sponsors" for the first year of this agreement are hereby estimated at

($). For each of the succeeding years of this agreement such net receipts from sponsors shall be estimated on the basis of its actual net receipts from sponsors for the preceding year. Within thirty (30) days after the end of each current year a final adjustment shall be made on the basis

of actual net receipts from sponsors for such contract year. The sustaining fee for any period of less than a year at the end of the term of this agreement shall be prorated.

B. The term "net receipts from sponsors" as used in this agreement shall be deemed to mean the gross amount paid for the use of radio broadcasting facilities of the Station for LICENSEE'S local radio programs, as defined herein, less any advertising agency commission not to exceed 15% actually allowed to a recognized advertising agency not owned or controlled by LICENSEE.

C. The term "net receipts from sponsors after deduction" as used in this agreement shall be deemed to mean net receipts from sponsors, less a sales commission on the net receipts from sponsors equal to 15% of such net receipts.

D. The term "gross amount paid for the use of radio broadcasting facilities of the Station for LICENSEE'S local radio programs" as used in this agreement shall be deemed to mean all payments made (whether in money or in any other form) by or on behalf of the sponsor of each program for the use of the radio broadcasting facilities of the Station for all such local radio programs, after deducting only rate card discounts, cash, quantity and/or frequency, actually allowed, and whether such payment shall have been made directly to LICENSEE or to any other persons, firms or corporations. Where merchandise, services or any thing or service of value is received in lieu of cash consideration for the use of the radio broadcasting facilities of the Station, the same shall be described and the reasonable value thereof determined and accounting made to SOCIETY upon the same basis as if a regular billing had been made by LICENSEE therefor in a sum equal to such reasonable value which in no event shall be deemed to exceed LICENSEE'S prevailing published card rate for such radio broadcasting facilities.

E. There shall be excluded from the "gross amount paid for the use of radio broadcasting facilities of the Station for LICENSEE'S local radio programs" all compensation with respect to any week over and above the total weekly amount indicated below, actually paid by the Station for such week to personnel whose duties primarily are acting as (a) master of ceremonies or disk jockey on musical programs, or (b) vocalist or instrumentalist engaged for a specific program, or (c) featured newscaster and news commentator, or (d) featured sportscaster, or (e) master of ceremonies on an entertainment program, or (f) announcer:

Station's Annual "Net Receipts from Sponsors"	Total Weekly Amount
Less than $50,000	$100
$50,000 to $150,000	$300
$150,000 to $300,000	$450
$300,000 to $500,000	$675
$500,000 to $750,000	$750
$750,000 to $1,000,000	$875
Over $1,000,000	$1,000

The total weekly amount for each contract year shall be based on the estimates of "net receipts from sponsors" made in accordance with Paragraph "5A2" for the sustaining fee. Within thirty (30) days after the end of each contract year, the total weekly amount for such contract year shall be adjusted on the basis of the actual "net receipts from sponsors" for such contract year.

F. Co-operative programs are programs which are furnished by a network to its affiliated stations under an arrangement permitting an affiliate to broadcast such programs on a sustaining basis or on a commercial basis under the sponsorship of a local, regional or national advertiser contracting directly with such affiliated station or its representative for the incorporation of the commercial credits of such advertiser into the program as broadcast by such affiliated station. For the purposes of this agreement only, and without prejudice to the position of SOCIETY or LICENSEE or any network of which LICENSEE is an affiliated station as to the status of co-operative programs under SOCIETY'S television broadcasting license, such co-operative radio programs shall be deemed to be "local radio programs" as defined herein.

G. No payment shall be required hereunder with respect to any sustaining programs of LICENSEE.

H. No payment shall be required hereunder with respect to a local commercial radio program of LICENSEE presented by transcription if a license has been granted by SOCIETY (as distinguished from its members) at the source to perform on such local commercial radio program by means of such transcription the musical compositions embodied therein.

I. If any local radio program of LICENSEE produced solely for broadcasting purposes is presented in a studio, auditorium or hall where an audience is admitted free of charge, or where the entire admittance charge is paid to an eleemosynary institution which shall request a gratuitous license from SOCIETY, no additional royalties or fees shall be charged by reason of the presence of such audience.

6. A. As to SUSTAINING FEE, LICENSEE shall on the twentieth day of each month during the term hereof pay to SOCIETY a sum equal to 1/12th of the sustaining fee payable hereunder and such payments shall be accompanied by statements setting forth the basis upon which the computation is made.

B. As to COMMERCIAL FEE, LICENSEE shall render monthly statements to SOCIETY on or before the twentieth day of each month covering the period of the preceding calendar month, on forms supplied gratis by SOCIETY, with respect to all gross amounts paid for the use of radio broadcasting facilities for LICENSEE'S local radio programs, and also showing all deductions in order to arrive at "net receipts from sponsors" and "net receipts from sponsors after deduction" as herein provided, without exception, and the percentage thereof payable to SOCIETY, which statements shall be accompanied by remittance due SOCIETY under the terms hereof.

C. Accountings and payments shall be made on a billing basis, with the right of deduction or rebate for bad accounts and discounts allowed or rebates paid. All billings made subsequent to the termination of this agreement with respect to local radio broadcasts made during the term hereof shall be accounted for by LICENSEE as and when such billings are made by LICENSEE.

D. LICENSEE shall also furnish to SOCIETY not later than twenty (20) days after the end of each contract year a statement, on forms supplied gratis by SOCIETY, with respect to all "gross amounts paid for the use of radio broadcasting facilities of the Station for LICENSEE'S local radio programs" during such year, and also showing all deductions in order to arrive at "net receipts from sponsors" for such year as herein provided without exception.

7. SOCIETY shall have the right, by its duly authorized representatives, at any time during customary business hours, to examine the books and records of account of LICENSEE only to such extent as may be necessary to verify any statement of accounting required pursuant hereto. SOCIETY shall consider all data and information coming to its attention as a result of any such examination of books and records as completely and entirely confidential.

8. Upon any breach or default by LICENSEE of any terms herein contained relating to the reports, accountings or payments required to be made by LICENSEE, SOCIETY may give LICENSEE thirty (30) days' notice in writing to cure such breach or default, and in the event that such breach or default has not been cured within said thirty (30) days, SOCIETY may then promptly terminate this license.

9. A. SOCIETY agrees to indemnify, save and hold LICENSEE, its sponsors and their advertising agencies, its and their artists, and each of them harmless, and defend LICENSEE, its sponsors and their advertising agencies, its and their artists, and each of them from and against any claim, demand or suit that may be made or

brought against them or any of them with respect to performances given on LICENSEE'S local radio programs during the term hereof in accordance with this license of (a) "cleared compositions", or (b) musical compositions heretofore copyrighted, composed or written by members of SOCIETY and now or hereafter during the term hereof in the repertory of SOCIETY, or (c) musical compositions hereafter during the term hereof copyrighted, composed or written by members of SOCIETY, or (d) musical compositions which SOCIETY shall hereafter certify in writing to LICENSEE as musical compositions copyrighted, composed or written by members of SOCIETY and included in SOCIETY'S repertory for the purposes of this agreement, or (e) musical compositions "deemed to be included in the repertory of SOCIETY" in accordance with the provisions of Sub-paragraph "C" of this Paragraph "9". In the event of the service upon LICENSEE of any notice, process, paper or pleading under which a claim, demand or action is made or begun against LICENSEE on account of any such matter as is hereinabove referred to, LICENSEE shall promptly give SOCIETY written notice thereof and simultaneously therewith deliver to SOCIETY any such notice, process, paper or pleading, or a copy thereof, and SOCIETY at its own expense shall have sole charge of the defense of any such action or proceeding. LICENSEE, however, shall have the right to engage counsel of its own, at its own expense, who may participate in the defense of any such action or proceeding and with whom counsel for SOCIETY shall cooperate. LICENSEE shall cooperate with SOCIETY in every way in the defense of any such action or proceeding, and in any appeals that may be taken from any judgments or orders entered therein, and shall execute all pleadings, bonds or other instruments, but at the sole expense of SOCIETY, that may be required in order properly to defend and resist any such action or proceeding, and prosecute any appeals taken therein. In the event of the service upon LICENSEE of any notice, process, paper or pleading under which a claim, demand or action is made or begun against LICENSEE on account of the performance on LICENSEE'S local radio programs of any musical composition (other than a "cleared composition") contained in the repertory of SOCIETY but not heretofore or hereafter during the term hereof copyrighted, composed or written by members of SOCIETY and not certified by SOCIETY as a musical composition copyrighted, composed or written by members of SOCIETY, SOCIETY agrees at the request of LICENSEE to cooperate with and assist LICENSEE in the defense of any such action or proceeding, and in any appeals that LICENSEE may elect to take from any judgments or orders entered therein.

B. As used in this Paragraph "9", a "cleared composition" shall mean any composition in the repertory of SOCIETY, not copyrighted, composed or written by a member of SOCIETY, which SOCIETY shall have notified LICENSEE is a composition with respect to which SOCIETY is willing to indemnify LICENSEE, provided that the performance of such composition shall be made on the specific local radio program of LICENSEE for which a clearance shall have been given by SOCIETY; provided further, however, that in the event that SOCIETY notifies LICENSEE in writing that it is willing to clear such a composition without limitation to a specific program, such composition shall thereafter be regarded as a "cleared composition" until such time as SOCIETY shall rescind such clearance.

C. For the purpose of this Paragraph "9" only, any musical composition (other than a musical composition or group of musical compositions expressly excepted therefrom or that may be restricted because of the operation of Paragraph "4" hereof) which is listed in

(a) the perforated sheets known as the "ASCAP Index" previously furnished by SOCIETY to LICENSEE, or

(b) the bound volume entitled "ASCAP Index 1952", or

(c) the bound volume entitled "ASCAP Supplement Index 1954",

as the same may have been revised heretofore or as the same may hereafter be revised, as a musical composition heretofore copyrighted by a present member of SOCIETY shall be deemed to be included in the repertory of SOCIETY. SOCIETY shall have the right to make reasonable revisions in such Indices from time to time, provided, however, that no such revision and no exception referred to above shall be effective as to any broadcast of LICENSEE'S local programs made, or delayed or repeat broadcasts thereof scheduled, prior to the date on which LICENSEE shall have received notice of such revision or exception. Nothing in this Sub-paragraph "C" shall be deemed to limit LICENSEE'S rights or to limit or affect LICENSEE'S obligations to pay the license fees payable under this agreement, or to limit SOCIETY'S obligations to indemnify as provided in Sub-paragraph "A" of this Paragraph "9".

D. The provisions contained in Paragraph "9" shall apply to LICENSEE'S sponsors and their advertising agencies, and its or their artists, as to LICENSEE'S local radio programs with the same effect as if in each instance there had been added to "LICENSEE" the words "its sponsors and their advertising agencies, its and their artists, and each of them".

10. SOCIETY agrees during the term hereof to maintain for the service of LICENSEE substantially SOCIETY'S present repertory of compositions copyrighted, composed or written by present members of SOCIETY. In case there shall be a substantial diminution, by reason of action by SOCIETY or any such members, in the use which LICENSEE may make of compositions copyrighted, composed or written by such members of SOCIETY as compared to the use which LICENSEE customarily has been permitted to make of such compositions prior to the actual execution of this agreement or in case there shall be a substantial diminution in SOCIETY'S present repertory of compositions copyrighted, composed or written by present members of SOCIETY, LICENSEE may give SOCIETY thirty (30) days' notice in writing to cure such substantial diminution. In the event that such substantial diminution in use or repertory has not been cured within said thirty (30) days, LICENSEE may then promptly terminate this agreement. If LICENSEE does not so terminate, LICENSEE shall have the right to obtain a reduction, as hereinafter provided, in the percentage payable on its "net receipts from sponsors after deduction" proportionate to such substantial diminution in use or repertory.

In the event that (a) such a substantial diminution in use or repertory shall have occurred and LICENSEE shall have notified SOCIETY thereof, and (b) SOCIETY shall not have cured such diminution within thirty (30) days thereafter, and (c) SOCIETY and LICENSEE shall be unable to agree within such thirty (30) days either as to the existence of such a diminution as would justify a decrease in the license fees payable hereunder or as to the appropriate reduction in the percentage payable on LICENSEE'S "net receipts from sponsors after deduction" by reason of such diminution, and (d) LICENSEE shall not have terminated this agreement as herein provided, the controversy shall be determined by arbitration as herein provided.

In the event that such a substantial diminution in use or repertory shall have been determined to exist as herein provided and thereafter SOCIETY shall have cured such diminution, SOCIETY shall have the right to obtain, as herein provided, the restoration of any reduction theretofore made in the license fees payable under this agreement by reason of such diminution. In the event that SOCIETY shall notify LICENSEE that in SOCIETY'S opinion any substantial diminution in use or repertory shall have been cured and within thirty (30) days thereafter SOCIETY and LICENSEE shall be unable to agree as to whether or not such diminution shall have been cured, the controversy shall be determined by arbitration as herein provided.

Any award of the arbitrators with respect to any controversy submitted to arbitration under this Paragraph "10" and reducing or restoring the percentage payable by LICENSEE hereunder shall be effective as of whichever shall be the later of (a) the date on which LICENSEE or SOCIETY, as the case may be, shall have given the other notice of such substantial diminution in use or repertory or the curing thereof, or (b) the date, if any, which the arbitrators shall specify as the date on which such diminution occurred or was cured.

In case any controversy is to be determined by arbitration as provided above, such arbitration shall be conducted under and pursuant to the laws of the State of New York, in accordance with the provisions of Paragraph "11" hereof.

In case the arbitrators shall determine that there has been such a substantial diminution in use or repertory and shall make an award reducing the percentage payable by LICENSEE on its "net receipts from sponsors after deduction", the reduction in such percentage payable by LICENSEE made by such award shall in no event be greater than the participation in such percentage payments of the publisher member or members of SOCIETY whose catalogue or catalogues shall have been the subject of such substantial diminution in use or repertory. The participation of such publisher member or members in such percentage payments made by LICENSEE hereunder shall be deemed to be the same percentage of such payments by LICENSEE as the percentage which such publisher member's or members' income from SOCIETY in respect of radio distribution for the year immediately

preceding shall bear to the entire distribution of royalties in respect of radio by SOCIETY to all of its publisher members during such year.

11. In the event that during the term of this agreement there is to be determined by arbitration hereunder whether there has been such a substantial diminution in use or repertory and, if so, the percentage by which the license fees payable hereunder shall be reduced by reason thereof, or whether a substantial diminution has been cured, as the case may be, as provided in Paragraph "10", each party shall on written notice to the other appoint an arbitrator within two (2) weeks after the expiration of the applicable thirty (30) day period specified in Paragraph "10" hereof.

In the event that within ten (10) days after the giving of such notice by one party, the other shall not by written notice appoint another arbitrator, then upon the written request of either party (or both) the person who is at the time performing the functions of President of the American Arbitration Association shall appoint the second arbitrator. When two arbitrators have been appointed they shall, if possible, agree upon a third arbitrator and shall appoint him by notice in writing, in triplicate, signed by both of them, one of which triplicate notices shall be given to each party hereto. If ten (10) days shall elapse after the appointment of the second arbitrator without notice of the appointment of the third arbitrator having been given, then upon the written request of either party (or both) the person who is at the time performing the functions of President of the American Arbitration Association shall appoint the third arbitrator. Upon appointment of the third arbitrator the three arbitrators shall hold a hearing and give opportunity to each party hereto to present his case in the presence of the other, and shall then make their award determining the license fees which shall be paid by LICENSEE to SOCIETY, taking into consideration all applicable factors which tend to determine whether there has been such a substantial diminution and, if so, the extent thereof and the percentage by which the license fees payable hereunder shall be reduced by reason thereof, or whether a substantial diminution has been cured, as the case may be, as provided in Paragraph "10". The arbitration shall be conducted in accordance with the rules of the American Arbitration Association then in effect.

The award of the majority of the arbitrators shall be binding upon the parties hereto, judgment may be entered thereon in any court having jurisdiction, and this agreement shall be deemed to be modified accordingly. Such award shall include the fixing of the expenses of the arbitration, which shall be borne equally by both parties.

12. In the event of the termination or suspension of the governmental licenses covering the Station or any substantial alteration or variation of the terms and conditions thereof, or any major interference with the operations of the Station due to governmental measures or restrictions, LICENSEE shall have the right to terminate this agreement upon seven (7) days' written notice.

13. In the event of:

(a) any major interference with the operation of SOCIETY in the state, territory, dependency, possession or political subdivision in which the Station is located, by reason of any law of such state, territory, dependency, possession or political subdivision; or

(b) any substantial increase in the cost to the SOCIETY of operating in such state, territory, dependency, possession or political subdivision, by reason of any law of such state, territory, dependency, possession or political subdivision, which is applicable to the licensing of performing rights,

SOCIETY shall have the right to terminate this agreement on thirty (30) days' written notice to LICENSEE.

14. All notices required or permitted to be given by either of the parties to the other hereunder shall be duly and properly given if mailed to such other party by registered or certified United States mail addressed to such other party at its main office for the transaction of business.

15. This agreement shall enure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns, but no assignment shall relieve the parties hereto of their respective obligations hereunder.

16. Attached hereto is a form of "local station per program radio license". By giving SOCIETY [illegible] notice thereof at least ninety (90) days prior to the commencement of the third contract year hereof, LICENSEE may substitute said local station per program radio license agreement in place hereof, in which event, effective with the commencement of the third contract year hereof, said per program radio license agreement shall be in full force and effect between LICENSEE and SOCIETY for the balance of the term of this agreement.

17. Attached hereto is a copy of a letter of interpretation dated December 30, 1939, which shall be deemed a part of this agreement.

IN WITNESS WHEREOF, this agreement has been duly executed by SOCIETY and LICENSEE this

day of , 19 , as of the day of , 19

AMERICAN SOCIETY OF COMPOSERS,
AUTHORS AND PUBLISHERS

By .....

.....
LICENSEE

By .....

LOCAL STATION PROGRAM SUSTAINING LICENSE

E 359

AGREEMENT made between AMERICAN SOCIETY OF COMPOSERS, AUTHORS AND PUBLISHERS (herein referred to as "SOCIETY") and

(herein referred to as "LICENSEE") as follows:

1. SOCIETY grants to LICENSEE and LICENSEE agrees to accept a limited license, as of the date of this agreement and ending December 31, 1939, a license to publicly perform by broadcasting on LICENSEE'S local sustaining programs from Radio Station

located at

(herein referred to as "the Station"), non-dramatic renditions of the separate musical compositions heretofore copyrighted or composed by members of SOCIETY and now or hereafter during the term hereof in the repertory of SOCIETY, or hereafter during the term hereof copyrighted or composed by members of SOCIETY, or of which SOCIETY shall have the right to license such performing rights. This license does not extend to or include the public performance by broadcasting or otherwise of any rendition or performance of any opera, operetta, musical comedy, play or like production, as such, in whole or in part. Nothing herein contained shall be construed as authorizing LICENSEE to grant to others any right to reproduce or perform publicly for profit by any means, method or process whatsoever, any of the musical compositions licensed hereunder or as such to make any records for any such broadcast rendition to publicly perform or reproduce the same for profit by any means, method or process whatsoever.

2. No license is hereby granted to broadcast local commercial programs of LICENSEE or any network programs.

"Local program" as used in this agreement shall be deemed to mean any program broadcast from the Station other than a network program.

"Local commercial program" as used in this agreement shall be deemed to mean any local program in connection with which a sponsor pays directly or indirectly for the use of the broadcasting facilities of the Station. A so-called "participating program" shall be deemed to be a commercial program.

"Local sustaining program" as used in this agreement shall be deemed to mean any local program other than a local commercial program.

"Network program" as used in this agreement shall be deemed to mean a program simultaneously broadcast over two or more radio stations interconnected by wire, radio or any other means whatsoever.

A single "delayed" or "repeat" broadcast of a network program from the Station shall be deemed to be a part of such network program.

The performances licensed hereunder may originate at the Station or at any other place whether or not such other place is licensed to publicly perform for profit the compositions licensed hereunder, regardless of the manner, means or method of such origination; but nothing herein contained shall be deemed to grant a license to any such other place itself (or to the parties responsible for the performance therein) for the public performance for profit in such other place of any such compositions.

3. SOCIETY reserves the right, at any time and from time to time, in good faith, to restrict the broadcasting of compositions from musical comedies, operas, operettas and motion pictures, or any other component being excessively broadcast, only for the purpose of preventing harmful effect upon such musical comedies, operas, operettas, motion pictures or compositions, in respect of other interests under the copyrights thereof; provided, however, that the maximum number of compositions which may be at any time thus restricted shall not exceed five hundred and moreover that limited licenses will be granted upon application entirely free of additional charge as to restricted compositions, if and when the copyright owners thereof are unable to show reasonable hazards to their major interests likely to result from such broadcasting; and provided, further, that SOCIETY shall not exercise such right to restrict any such composition for the purpose of permitting the fixing or regulating of fees for the rendition or broadcasting of such composition; and provided, further, that in no case shall any charges, "free plugs" or other consideration be required in respect of any permission granted to perform a restricted composition; and provided, further, that in no event shall any composition, after the initial broadcast thereof, be restricted for the purpose of confining further broadcasts thereof to a particular artist, station, network or program.

SOCIETY reserves the further right, at any time and from time to time, in good faith, to restrict the broadcasting of new compositions, over and above the number specified in the previous paragraph, only as to which no suit has been brought or threatened on a claim that such composition infringes a composition not contained in SOCIETY'S repertory or on a claim that SOCIETY does not have the right to license the performing rights in such composition.

4. In consideration of the license herein granted, LICENSEE agrees to pay to SOCIETY for each of its local sustaining programs of which any or all of the musical content shall include, in whole or in part, any musical composition licensed hereunder, an amount equal to 1% of the Station's published full card rate applicable to a similar local commercial program for the time when such sustaining program shall be broadcast, subject to the following deductions:

(a) Rate card discounts, if any, which would normally be actually allowed to sponsors for such period of time.

(b) Advertising agency commission not to exceed 15% if normally actually allowed to recognized advertising agencies not owned or controlled by LICENSEE.

(c) A sales commission equal to 15% of the amount remaining after items (a) and (b) of this Paragraph "4" are deducted therefrom;

provided that in no event shall the license fees payable hereunder be greater than the license fees that would have been payable to SOCIETY had the parties executed, in place hereof, an agreement covering local sustaining broadcasts from the Station on the Local Blanket Sustaining Agreement attached hereto.

No payment shall be required hereunder with respect to political broadcasts.

If any local sustaining program of LICENSEE produced solely for broadcasting purposes is presented in a [illegible] paid to an eleemosynary institution which shall request a gratuitous license from SOCIETY, no additional royalties or fees shall be charged by reason of the presence of such audience.

5. A. LICENSEE shall furnish to SOCIETY postage prepaid on or before the 20th day of each month during the term hereof, covering the period of the preceding calendar month:

(1) A copy of the complete Station log for each day in the form required by Federal Communications Commission Rules and Regulations, Part 4, Section 3.404 and,

(2) as to each local program listed on such station logs as musical or which has any musical content, statements on forms [illegible] to be furnished by SOCIETY showing the following information with respect to each such musical composition rendered on such program: (a) the date of rendition, (b) the title of the program, (c) the time rendered, (d) as to each musical composition rendered on such program, the full title thereof, the name of the composer and author, and the name of the copyright owner, (e) the name of the manufacturer and the serial number of the phonograph record or electrical transcription from which such rendition was made, (f) the regular printed rate card rate, if any, charged for the program on which such musical composition was broadcast, and all deductions and credits thereto, and (g) with respect to each local commercial program, the name of the sponsor.

The foregoing requirements apply to all local programs without exception and regardless of the origination of the program. Said statements shall be rendered under oath and accompanied by remittance due SOCIETY under the terms hereof.

B. Where renditions are made by means of phonograph records or electrical transcriptions the requirement of subdivision "(d)" of paragraph "5 A (2)" shall be deemed to have been complied with by LICENSEE furnishing the full title of each musical composition and such other information in full, as is shown on the label of the phonograph record or electrical transcription from which such renditions are made, as to the composer, author and publisher of such composition, together with the name and brand of the manufacturer and the serial number of the phonograph record or electrical transcription.

C. Any failure of LICENSEE to comply with the requirements set out in this paragraph "5" as to the complete identification of compositions performed on local commercial programs, shall create the presumption that the music and/or compositions used were compositions in the repertory of SOCIETY. Anything to the contrary herein notwithstanding, this license shall not extend to or include compositions wholly unreported in such statements.

6. Society shall have the right, by its duly authorized representatives, at any time during customary business hours, to examine the books, rate cards and records of account (including logs and all other records, relating to the music and/or compositions performed on local programs of the Station) of LICENSEE only to such extent as may be necessary to verify any such monthly statement as may be rendered pursuant hereto. SOCIETY shall consider all data and information coming to its attention as a result of any such examination of books, rate cards and records as completely and entirely confidential.

7. Upon any breach or default by LICENSEE of any terms herein contained relative to the reports, accountings or payments required to be made by LICENSEE, SOCIETY may give LICENSEE thirty (30) days' notice in writing to cure such breach or default, and in the event that such breach or default has not been cured within said thirty (30) days, SOCIETY may then promptly terminate this license.

8. A. SOCIETY agrees to indemnify, save and hold LICENSEE, its artists, and each of them harmless, and defend LICENSEE, its artists, and each of them from and against any claim, demand or suit that may be made or brought against them or any of them with respect to renditions given on LICENSEE'S local sustaining programs during the term hereof in accordance with this license of "cleared compositions", or of musical compositions heretofore copyrighted or composed by members of SOCIETY and now or hereafter during the term hereof in SOCIETY'S repertory, or hereafter during the term hereof copyrighted or composed by present members of SOCIETY or by future members of SOCIETY so long as such future members shall be members of SOCIETY. In the event of the service upon LICENSEE of any notice, process, paper or pleading under which a claim, demand or action is made or begun against LICENSEE on account of any such matter as is hereinabove referred to, LICENSEE shall promptly give SOCIETY written notice thereof and shall simultaneously therewith deliver to SOCIETY any such notice, process, paper or pleading, or a copy thereof, and SOCIETY at its own expense shall have sole charge of the defense of any such action or proceeding. LICENSEE, however, shall have the right to engage counsel of its own, at its own expense, who may participate in the defense of any such action or proceeding and with whom counsel for SOCIETY shall cooperate. LICENSEE shall cooperate with SOCIETY in every way in the defense of any such action or proceeding, and in any appeals that may be taken from any judgments or orders entered therein, and shall execute all pleadings, bonds or other instruments, but at the sole expense of SOCIETY, that may be required in order properly to defend and resist any such action or proceeding, and prosecute any appeals taken therein. In the event of the service upon LICENSEE of any notice, process, paper or pleading under which a claim, demand or action is made, or begun against LICENSEE on account of the rendition on LICENSEE'S local sustaining programs of any musical composition (other than a "cleared composition") contained in SOCIETY'S repertory but not heretofore or hereafter during the term hereof copyrighted or composed by members of SOCIETY, SOCIETY agrees at the request of LICENSEE to cooperate with and assist LICENSEE in the defense of any such action or proceeding, and in any appeals that LICENSEE may elect to take from any judgments or orders entered therein.

B. As used in this Paragraph "8" a "cleared composition" shall mean any composition in SOCIETY'S repertory, not copyrighted or composed by a member of SOCIETY, which SOCIETY shall have notified LICENSEE is a composition with respect to which SOCIETY is willing to indemnify LICENSEE, provided that the rendition of such composition shall be made on the specific local sustaining program of LICENSEE for which a clearance shall have been given by SOCIETY.

C. For the purposes of this Paragraph "8" only, any musical composition (other than a musical composition or group of musical compositions expressly excepted therefrom or that may be restricted because of the operation of Paragraph "3" hereof) heretofore copyrighted by a present member of SOCIETY shall be deemed to be included in SOCIETY'S repertory if such musical composition is designated in SOCIETY'S Index of Compositions heretofore made available to stations, as the same may be revised as required or permitted by this subparagraph "C", as a musical composition the non-dramatic performing rights in which are controlled by SOCIETY. SOCIETY will make available to LICENSEE as soon as possible, but in any event within one year from the date of this agreement (a) such additions to such Index as have been compiled by SOCIETY since the distribution to the stations of the last instalment of such Index in so far as such additions relate to musical compositions copyrighted by members of SOCIETY and the non-dramatic rights in which are now controlled by SOCIETY together with (b) such other additions as shall be necessary to reflect in such Index the musical compositions which have been copyrighted by SOCIETY'S members since August 1, 1939, and prior to the date of this agreement and which shall be in SOCIETY'S repertory at the date of this agreement. SOCIETY shall have the right to make reasonable revisions in such Index from time to time, provided, however, that no such revision and no deletion referred to above shall be effective as to any broadcast of LICENSEE'S local sustaining programs prior to the date on which LICENSEE shall have received notice of such revision or deletion. Nothing in this subparagraph "C" shall be deemed to limit LICENSEE'S rights or to limit or affect LICENSEE'S obligations to pay license fees payable under this agreement or to limit SOCIETY'S obligations to indemnify as provided in subparagraph "A" of this paragraph.

To [illegible] artists, as to LICENSEE'S local sustaining programs with the same effect as if in each instance there had been added to "LICENSEE" the words "its artists, and each of them."

9. SOCIETY agrees during the term hereof to maintain in the service of LICENSEE substantially SOCIETY'S present [illegible] copyrighted or composed by members of SOCIETY. In case there shall be a substantial diminution, by reason of [illegible] by SOCIETY or any of its members, in the use which LICENSEE may make of compositions copyrighted or composed by members of SOCIETY as compared to the [illegible] shall be a substantial diminution in SOCIETY'S present repertory of compositions copyrighted or composed by

members of SOCIETY, LICENSEE may give SOCIETY thirty (30) days' notice in writing to cure such substantial diminution. If the said [illegible] thirty (30) days, LICENSEE may [illegible] applicable "published full card rate." After deduction, [illegible] such substantial diminution in use of repertory

In the event that such a substantial diminution in use or repertory shall have occurred and LICENSEE shall have [illegible] days thereafter, and prior to LICENSEE's [illegible] as to the existence or extent of such diminution as would justify a reduction in the applicable rate, LICENSEE may withhold from the appropriate reduction in the percentage payable by LICENSEE as applicable "published full card rate" after deductions, by reason of such diminution, but LICENSEE shall not have terminated this agreement as herein provided, the controversy shall be determined by arbitration as herein provided.

In the event that such a substantial diminution in use or repertory shall have been determined to exist as herein provided, and thereafter SOCIETY shall have cured such diminution, SOCIETY shall have the right to notify LICENSEE thereof; provided, the reduction in any percentage thereafter payable by LICENSEE hereunder by reason of such diminution. In the event that SOCIETY shall notify LICENSEE that SOCIETY'S repertory shall have been restored to its former substantial diminution in use or repertory shall have been cured and within thirty (30) days thereafter SOCIETY and LICENSEE shall be unable to agree as to whether or not such diminution shall have been cured, the controversy shall be determined by arbitration as herein provided.

Any award of the arbitrators with respect to any controversy submitted to arbitration under this Paragraph "9" and reducing or restoring the percentage payable by LICENSEE hereunder, shall be effective as of whichever shall be the later of (a) the date on which LICENSEE or SOCIETY, as the case may be, shall have given the other notice of such substantial diminution of use of repertory or the curing thereof or (b) the date, if any, which the arbitrators shall specify as the date on which such diminution occurred or was cured.

In case any controversy is to be determined by arbitration as provided above, such arbitration shall be conducted under and pursuant to the laws of the State of New York in accordance with the provisions of Paragraph "11" hereof, and each party shall on written notice to the other appoint an arbitrator within two (2) weeks after the expiration of the applicable thirty (30) day period specified above.

In case the arbitrators shall determine that there has been such a substantial diminution in use or repertory and shall make an award reducing the percentage payable by LICENSEE on its applicable "published full card rates" after deductions, the reduction in such percentage payable by LICENSEE made by such award shall in no event be greater than the participation in such percentage payments of the publisher member or members of SOCIETY whose catalogue or catalogues shall have been the subject of such substantial diminution in use or repertory. The participation of such publisher member or members in such percentage payments made by LICENSEE hereunder shall be deemed to be the same percentage of such payments by LICENSEE as the percentage which such publisher member's or members' income from SOCIETY (a) in respect of radio distribution for the year immediately preceding shall bear to the entire distribution of royalties in respect of radio by SOCIETY to all of its publisher members during such year, in respect of any diminution occurring on or after January 1, 1943, and (b) in respect of radio distribution for the three months ending December 31, 1941 shall bear to the entire distribution of royalties in respect of radio by SOCIETY to all of its publisher members during such three (3) months, in respect of any diminution occurring before January 1, 1943.

10 If SOCIETY has or obtains from substantially all of its present and future members the right to contract as herein provided as to any period or periods subsequent to the term hereof, this license shall be automatically extended for an additional term equal to the aggregate of such period or periods but not exceeding nine years from the date of expiration of its original term, subject to all the terms and conditions herein set forth, except those contained in Paragraph "16", and except as follows:

(a) SOCIETY may demand increased license fees for such additional term, but only if it shall make such demand by written notice to LICENSEE at least twelve (12) months prior to the expiration of the original term whereupon if, at least seven (7) months prior to the expiration of the original term the parties fail to reach an agreement as to such license fees and LICENSEE shall not have served a notice of termination as provided in subdivision "(b)" of this paragraph, the license fees payable hereunder by LICENSEE to SOCIETY during such additional term, shall be determined by arbitration as herein provided. In no event, however, shall the license fees fixed by the award for the additional term be less than those herein provided for the original term of this License, as modified by such reduction, if any, in such license fees as shall theretofore have been made and are in effect at the time of such award in accordance with Paragraph "9" of this agreement. In the event that the license fees payable hereunder by LICENSEE to SOCIETY during such additional term are to be determined by arbitration, such arbitration shall be conducted under and pursuant to the laws of the State of New York, in accordance with the provisions of Paragraph "11" hereof, at least six (6) months and not more than seven (7) months prior to the expiration of the original term hereof, each party shall on written notice to the other appoint an arbitrator.

(b) If SOCIETY shall serve such notice demanding increased license fees LICENSEE may terminate this agreement as of the expiration of the original term hereof by giving at least seven (7) months' prior written notice to SOCIETY.

(c) During such additional term, the phrase "SOCIETY'S present repertory of compositions copyrighted or composed by members of SOCIETY" as used in Paragraph "9", shall mean SOCIETY'S repertory of compositions copyrighted or composed by members of SOCIETY as the same may exist on whichever of the following is applicable: (1) January 1, 1949, if SOCIETY shall not have notified LICENSEE prior thereto that it will demand increased license fees for such additional term, or (2) the date when SOCIETY and LICENSEE shall mutually agree upon new rates for the additional term, or (3) the date the presentation of all the evidence in the arbitration proceeding (if any) under this Paragraph "10" shall have been completed.

11. In the event that during the original or additional term of this agreement there is to be determined by arbitration hereunder whether there has been such a substantial diminution in use or repertory and, if so, the percentage by which the license fees payable hereunder shall be reduced by reason thereof, or whether a substantial diminution has been cured, as the case may be, as provided in Paragraph "9", or in the event that the license fees payable during the additional term of this agreement are to be determined by arbitration, as provided in Paragraph "10" of this agreement, each party shall on written notice to the other appoint an arbitrator within the time limit specified in Paragraph "9" or "10", as the case may be.

In the event that within ten (10) days after the giving of such notice by one party, the other shall not by written notice appoint another arbitrator, then the arbitrator first appointed shall be the sole arbitrator. When two arbitrators have been appointed they shall, if possible, agree upon a third arbitrator and shall appoint him by notice in writing, in triplicate, signed by both of them, one of which triplicate notices shall be given to each party hereto. If ten (10) days shall elapse after the appointment of the second arbitrator, without notice of the appointment of the third arbitrator having been given, then either party (or both) may in writing request the person who is at the time President of the American Arbitration Association to appoint the third arbitrator. Upon appointment of the third arbitrator the three arbitrators shall hold a [illegible] hearings and give [illegible] party notice to present his case in the presence of the other, and shall then make their [illegible] award determining the license fees which shall be paid by LICENSEE to SOCIETY during such original or additional term, giving into consideration all [illegible] factors which tend to determine whether there has been such a substantial diminution and, if so, the extent thereof and the percentage by which the license fees payable hereunder shall be reduced by reason thereof, or whether a substantial diminution has been cured, as the case may be, as provided in Paragraph "9", or which tend to justify either a continuation of or increase in the license fees payable hereunder as provided in Paragraph "10". The arbitration shall be conducted in accordance with the rules of the American Arbitration Association then in effect.

The award of the majority of the arbitrators [illegible] arbitration [illegible] shall be binding upon the parties [illegible] and may be entered in any court having jurisdiction thereof, and the agreement shall be construed to be [illegible] which shall be governed by the laws of the State of New York.

12. In the event of the destruction or [illegible] of the entertainment hall [illegible] the Society may substitute [illegible] Society elects to [illegible] reduction of the performing [illegible]

13. In the event of [illegible] SOCIETY [illegible] suspension or [illegible] SOCIETY shall have the right to terminate this agreement on ninety (90) days' written notice to LICENSEE.

14. SOCIETY hereby covenants not to sue LICENSEE for [illegible] on account of any claims whatsoever it may have which may heretofore have arisen as a result of the broadcast on the station of LICENSEE'S sustaining programs prior to , 1941.

15. All notices required or permitted to be given by either of the parties to the other hereunder shall be duly and properly given if mailed to such other party by registered United States mail addressed to such other party at its main office for the transaction of business.

16. Attached hereto is a form of "Local Market Sustaining License Agreement". At the end of any contract year, during the original term hereof, LICENSEE may on ninety (90) days prior written notice to SOCIETY substitute said Local Market Sustaining License Agreement for the [illegible] thereof, and thereupon said agreement shall be in full force and effect between LICENSEE and SOCIETY, on the understanding that at the end of any subsequent contract year LICENSEE may likewise on ninety (90) days prior written notice to SOCIETY shift back to this form of agreement. This right of LICENSEE to shift from one form to the other shall continue to be available to LICENSEE at the end of each contract year during the original term hereof, upon such ninety (90) days' prior written notice to SOCIETY.

17. This agreement shall enure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns, but no assignment shall relieve the parties hereto of their respective obligations hereunder.

IN WITNESS WHEREOF, this agreement has been duly executed by SOCIETY and LICENSEE and their respective seals hereto attached as of the day of , 194 .

AMERICAN SOCIETY OF COMPOSERS, AUTHORS AND PUBLISHERS

By.....

.....
Licensee

By.....

LOCAL STATION BLANKET TELEVISION LICENSE

E 363

Agreement made between AMERICAN SOCIETY OF COMPOSERS, AUTHORS AND PUBLISHERS (herein referred to as "SOCIETY") and

(herein referred to as "LICENSEE") as follows:

1. A. SOCIETY grants to LICENSEE and LICENSEE accepts for a period commencing as of and ending December 31, 1961, a license to perform publicly by television broadcasting on LICENSEE'S local television programs from Television Station located at

(herein referred to as "the Station") non-dramatic performances of the separate musical compositions heretofore copyrighted, composed or written by those members of SOCIETY listed in Schedule "A" attached hereto (as the same may be augmented from time to time) and now or hereafter during the term hereof in the repertory of SOCIETY, or hereafter during the term hereof copyrighted, composed or written by such members of SOCIETY, or of which SOCIETY shall have the right to license such performing rights. As additional members of SOCIETY hereafter grant to SOCIETY the right to license performances by means of television broadcasting, such additional members will be added to those listed in Schedule "A" as of the date upon which SOCIETY acquires such rights.

B. This license does not extend to or include the public performance by television broadcasting or otherwise of any rendition or performance of (a) any opera, operetta, musical comedy, play or like production, as such, in whole or in part, or (b) any composition from any opera, operetta, musical comedy, play or like production (whether or not such opera, operetta, musical comedy, play or like production was presented on the stage or in motion picture form) in a manner which recreates the performance of such composition with substantially such distinctive scenery or costume as was used in the presentation of such opera, operetta, musical comedy, play or like production (whether or not such opera, operetta, musical comedy, play or like production was presented on the stage or in motion picture form); provided, however, that the rights granted to LICENSEE under this agreement shall be deemed to include a grant of the right to make non-dramatic performances of compositions licensed hereunder by the television broadcasting of a motion picture containing such compositions if the rights in such motion picture other than those licensed under this agreement have been obtained from the parties in interest.

Nothing herein contained shall be deemed to license the public performance by television broadcasting of dramatic performances. Any performance of a separate musical composition which is not a dramatic performance, as defined herein, shall be deemed to be a non-dramatic performance. For the purposes of this agreement, a dramatic performance shall mean a performance of a musical composition on a television program in which there is a definite plot depicted by action and where the performance of the musical composition is woven into and carries forward the plot and its accompanying action. The use of dialogue to establish a mere program format or the use of any non-dramatic device merely to introduce a performance of a composition shall not be deemed to make such performance dramatic.

The definition of the terms "dramatic" and "non-dramatic" performances contained in this Sub-paragraph "B" are purely for the purposes of this agreement and for the term thereof and shall not be binding upon or prejudicial to any position taken by either of the parties subsequent to the expiration thereof or for any purpose other than this agreement.

C. Except as expressly herein otherwise provided, nothing herein contained shall be construed as authorizing LICENSEE to grant to others any right to reproduce or perform publicly for profit by any means, method or process whatsoever, any of the musical compositions licensed hereunder or as authorizing any receiver of any television broadcast to perform publicly or reproduce the same for profit, by any means, method or process whatsoever.

2. A. "Local television program" as used in this agreement shall be deemed to mean a program, whether or not such program shall include visual material, broadcast from the Station other than a network television program. The performances licensed hereunder may originate at the Station or at any other place whether or not such other place is licensed to perform publicly for profit the compositions licensed hereunder, regardless of the manner, means, or method of such origination; but nothing herein contained shall be deemed to grant a license to such place itself (or to the parties responsible for the performance therein) for the public performance for profit in such place of any such compositions.

B. "Network television program" as used in this agreement shall be deemed to mean a program, whether or not such program shall include visual material, broadcast simultaneously or by so-called "delayed" or "repeat" broadcasts (sometimes known as "rebroadcasts") over two or more affiliated stations.

C. "Affiliated station" as used in this agreement shall be deemed to mean any television broadcasting station in the United States which regularly broadcasts network television programs of a television network or which appears on the television rate cards of such network and which (a) is interconnected with such network by co-axial cable, wire, television relay or any other means whatsoever, or (b) pending the availability of such means of interconnecting the station with such network at an expenditure which is not unreasonable in comparison with the cost of interconnecting such network's other affiliated stations, is a party to a non-interconnected affiliation agreement with such network. Such station shall only be deemed to be an affiliated station so long as it regularly broadcasts such programs or appears on such rate cards, as the case may be. All television broadcasting stations in the United States which are owned and operated by a network and which broadcast such network's television programs shall be deemed to be affiliated stations for the purposes of this agreement, whether or not they appear on such network's television rate cards.

3. A. LICENSEE agrees to furnish to SOCIETY upon request during the term of this agreement a list of all musical compositions (or, at the option of LICENSEE, a list of all musical compositions licensed hereunder) broadcast from or through the Station on LICENSEE'S local television programs, showing the title of each composition and the composer and author thereof, and a brief notation of the scenery and costumes used, provided that LICENSEE shall not be obligated under this paragraph to furnish such a list covering a period or periods in the aggregate in excess of three months during any one calendar year.

B. At the request of SOCIETY, LICENSEE will furnish to SOCIETY the dialogue, if any, used in specified programs. SOCIETY will only ask for dialogue where it is reasonably necessary for its purposes. In cases where dialogue is only available in recorded form it will be sufficient for LICENSEE to permit SOCIETY to screen the recording. When the dialogue is available in written form in any of the cities where SOCIETY has an office and it is inconvenient for LICENSEE to make an additional copy, it will be sufficient if LICENSEE permits a representative of SOCIETY to examine the file copy of the dialogue at LICENSEE'S office. LICENSEE will have no obligation to furnish SOCIETY with dialogue in cases where it does not have within its control either a written or recorded version of the dialogue.

C. With respect to motion pictures broadcast from or through the Station on LICENSEE'S local television programs, LICENSEE'S obligations under Sub-paragraphs "A" and "B" of this Paragraph "3" shall be deemed to have been complied with if LICENSEE shall identify the picture for SOCIETY by its title, the name

of the producer where available, and the copyright notice contained therein where available. If SOCIETY does not have a music cue sheet for such picture, and LICENSEE does have such a sheet, LICENSEE shall make such music cue sheet available to SOCIETY for examination at SOCIETY'S request and SOCIETY shall return such sheet to LICENSEE promptly.

D. The provisions of Sub-paragraphs "B" and "C" of this Paragraph "3" shall not limit LICENSEE'S obligation to cooperate with SOCIETY in connection with any claim, demand or action referred to in Sub-paragraph "3 A" of this agreement.

4. A. The members of SOCIETY shall have the right, at any time and from time to time, in good faith, to restrict the television broadcasting of compositions from musical comedies, operas, operettas and motion pictures, or any other composition being excessively broadcast, only for the purpose of preventing harmful effect upon such musical comedies, operas, operettas, motion pictures or compositions in respect of other interests under the copyrights thereof; provided, however, that the maximum number of compositions which may be at any time thus restricted shall not exceed 750 and moreover that limited licenses will be granted upon application to SOCIETY entirely free of additional charge as to restricted compositions, if and when the copyright owners thereof are unable to show reasonable hazards to their major interests likely to result from such television broadcasting; and provided further that such right to restrict any such composition shall not be exercised for the purpose of permitting the fixing or regulating of fees for the recording or transcribing of such composition; and provided further that in no case shall any charges, "free plugs", or other consideration be required in respect of any permission granted to perform a restricted composition; and provided further that in no event shall any composition, after the initial television broadcast thereof, be restricted for the purpose of confining further television broadcasts thereof to a particular artist, station, network or program.

B. SOCIETY reserves the further right, at any time and from time to time, in good faith, to restrict the television broadcasting of any compositions, over and above the number specified in the previous paragraph, only as to which any suit has been brought or threatened on a claim that such composition infringes a composition not contained in the repertory of SOCIETY or on a claim by a non-member of SOCIETY or by a member not listed in Schedule "A", as the same may be augmented from time to time, that SOCIETY does not have the right to license the public performance of such composition by television broadcasting.

5. A. In consideration of the license herein granted, LICENSEE agrees to pay to SOCIETY the following:

a. SUSTAINING FEE: For each calendar month during each contract year of the term hereof, the highest quarter-hour card rate of the Station for a single quarter-hour of television broadcasting.

If such highest quarter-hour card rate changes during any month, the monthly sustaining fee of the Station shall be pro-rated accordingly.

b. COMMERCIAL FEE: In addition, a sum equal to 2.05% of its "net receipts from sponsors after deductions".

B. The term "net receipts from sponsors" as used in this agreement shall be deemed to mean the gross amount paid for the use of television broadcasting facilities of the Station for LICENSEE'S local television programs, as defined herein, less any advertising agency commission not to exceed 15% actually allowed to a recognized advertising agency not owned or controlled by LICENSEE.

C. The term "net receipts from sponsors after deductions" as used in this agreement shall be deemed to mean net receipts from sponsors, less a sales commission on the net receipts from sponsors equal to 15% of such net receipts.

D. The term "gross amount paid for the use of television broadcasting facilities of the Station for LICENSEE'S local television programs" as used in this agreement shall be deemed to mean all payments made (whether in money or in any other form) by or on behalf of the sponsor of each program for the use of the television broadcasting facilities of the Station for all such local television programs, after deducting only rate card discounts, quantity and/or frequency, actually allowed, and whether such payment shall have been made directly to LICENSEE or to any other persons, firms or corporations. Where merchandise, services or any thing or service of value is received in lieu of cash consideration for the use of the television broadcasting facilities of the Station, the same shall be described and the reasonable value thereof determined and accounting made to SOCIETY upon the same basis as if a regular billing had been made by LICENSEE therefor in a sum equal to such reasonable value which in no event shall be deemed to exceed LICENSEE'S prevailing published card rate for such television broadcasting facilities.

E. No payment shall be required hereunder with respect to bona fide charges for the use of facilities furnished by LICENSEE to sponsors other than for time on the air, as such, provided:

a. that such charges are itemized separately when billed to the sponsors or their advertising agencies; and

b. that such charges are in addition to LICENSEE'S published applicable card rate (less applicable rate card discounts, quantity and/or frequency, actually allowed) for the use of LICENSEE'S television broadcasting facilities (i. e., time on the air) for the actual broadcast.

For the purpose of this Sub-paragraph "5 E", there shall be included in the term "LICENSEE'S published applicable card rate (less applicable rate card discounts, quantity and/or frequency, actually allowed) for the use of LICENSEE'S television broadcasting facilities (i. e., time on the air) for the actual broadcast" charges for facilities normally required at LICENSEE'S station as a bona fide minimum for the television broadcast of a live studio program or a film program, as the case may be, excluding bona fide charges for rehearsal provided that they comply with the requirements of Sub-divisions "a" and "b" of this Sub-paragraph "5 E".

F. Co-operative programs are programs which are furnished by a network to its affiliated stations under an arrangement permitting an affiliate to broadcast such programs on a sustaining basis or on a commercial basis under the sponsorship of a local, regional or national advertiser contracting directly with such affiliated station or its representative for the incorporation of the commercial credits of such advertiser into the program as broadcast by such affiliated station. For the purposes of this agreement only, and without prejudice to the position of SOCIETY or LICENSEE or any network of which LICENSEE is an affiliated station as to the status of co-operative programs under SOCIETY'S non-visual broadcasting licenses, such co-operative television programs shall be deemed to be "network television programs" as defined herein.

G: No payment shall be required hereunder with respect to any sums received from political local television programs of LICENSEE.

H. No payment shall be required hereunder with respect to a local commercial television program of LICENSEE presented by motion picture or by transcription if a license has been granted by SOCIETY (as distinguished from its members) at the source to perform on such local commercial television program by means of such motion picture or such transcription, as the case may be, the musical compositions embodied therein.

I. If any local television program of LICENSEE produced solely for broadcasting purposes is presented in a studio, auditorium or hall where an audience is admitted free of charge, or where the entire admittance charge is paid to an eleemosynary institution which shall request a gratuitous license from SOCIETY, no additional royalties or fees shall be charged by reason of the presence of such audience.

6. A. As to SUSTAINING FEE, LICENSEE shall on the twentieth day of each month during the term hereof pay to SOCIETY the monthly sustaining fee payable hereunder and such payments shall be accompanied by statements setting forth the basis upon which the computation is made.

B. As to COMMERCIAL FEE, LICENSEE shall render monthly statements to SOCIETY on or before the twentieth day of each month covering the period of the preceding calendar month, on forms supplied gratis by SOCIETY, with respect to all gross amounts paid for the use of television broadcasting facilities for LICENSEE'S local television programs, and also showing all deductions in order to arrive at "net receipts from sponsors" and "net receipts from sponsors after deductions" as herein provided, without exception, and the percentage thereof payable to SOCIETY, which statements shall be accompanied by remittance due SOCIETY under the terms hereof.

C. Accountings and payments shall be made on a billing basis, with the right of deduction or rebate for bad accounts and discounts allowed or rebates paid. All billings made subsequent to the termination of this agreement with respect to local television broadcasts made during the term hereof shall be accounted for by LICENSEE as and when such billings are made by LICENSEE.

7. SOCIETY shall have the right, by its duly authorized representatives, at any time during customary business hours, to examine the books and records of account of LICENSEE only to such extent as may be necessary to verify (a) any statement of accounting required pursuant hereto, and (b) any statement of accounting to SOCIETY required of a network in connection with co-operative television programs made available to LICENSEE by such network. SOCIETY shall consider all data and information coming to its attention as a result of any such examination of books and records as completely and entirely confidential.

8. Upon any breach or default by LICENSEE of any terms herein contained relating to the reports, accountings or payments required to be made by LICENSEE, SOCIETY may give LICENSEE thirty (30) days' notice in writing to cure such breach or default, and in the event that such breach or default has not been cured within said thirty (30) days, SOCIETY may then promptly terminate this license.

9. A. SOCIETY agrees to indemnify, save and hold LICENSEE, its sponsors and their advertising agencies, its and their artists, and each of them harmless, and defend LICENSEE, its sponsors and their advertising agencies, its and their artists, and each of them from and against any claim, demand or suit that may be made or brought against them or any of them with respect to performances given on LICENSEE'S local television programs during the term hereof in accordance with this license of (a) "cleared compositions", or (b) musical compositions heretofore copyrighted, composed or written by members of SOCIETY listed in Schedule "A" as augmented from time to time and now or hereafter during the term hereof in the repertory of SOCIETY, or (c) musical compositions hereafter during the term hereof copyrighted, composed or written by such members of SOCIETY, or (d) musical compositions which SOCIETY shall hereafter certify in writing to LICENSEE as musical compositions copyrighted, composed or written by such members of SOCIETY and included in SOCIETY'S repertory for the purposes of this agreement, or (e) musical compositions "deemed to be included in the repertory of SOCIETY" in accordance with the provisions of Sub-paragraph "C" of this Paragraph "9". In the event of the service upon LICENSEE of any notice, process, paper or pleading under which a claim, demand or action is made or begun against LICENSEE on account of any such matter as is hereinabove referred to, LICENSEE shall promptly give SOCIETY written notice thereof and simultaneously therewith deliver to SOCIETY any such notice, process, paper or pleading, or a copy thereof, and SOCIETY at its own expense shall have sole charge of the defense of any such action or proceeding. LICENSEE, however, shall have the right to engage counsel of its own, at its own expense, who may participate in the defense of any such action or proceeding and with whom counsel for SOCIETY shall cooperate. LICENSEE shall cooperate with SOCIETY in every way in the defense of any such action or proceeding, and in any appeals that may be taken from any judgments or orders entered therein, and shall execute all pleadings, bonds or other instruments, but at the sole expense of SOCIETY, that may be required in order properly to defend and resist any such action or proceeding, and prosecute any appeals taken therein. In the event of the service upon LICENSEE of any notice, process, paper or pleading under which a claim, demand or action is made or begun against LICENSEE on account of the performance on LICENSEE'S local television programs of any musical composition (other than a "cleared composition") contained in the repertory of SOCIETY but not heretofore or hereafter during the term hereof copyrighted, composed or written by members of SOCIETY and not certified by SOCIETY as a musical composition copyrighted, composed or written by members of SOCIETY, SOCIETY agrees at the request of LICENSEE to cooperate with and assist LICENSEE in the defense of any such action or proceeding, and in any appeals that LICENSEE may elect to take from any judgments or orders entered therein.

B. As used in this Paragraph "9", a "cleared composition" shall mean any composition in the repertory of SOCIETY, not copyrighted, composed or written by a member of SOCIETY, which SOCIETY shall have notified LICENSEE is a composition with respect to which SOCIETY is willing to indemnify LICENSEE, provided that the performance of such composition shall be made on the specific local television program of LICENSEE for which a clearance shall have been given by SOCIETY; provided further, however, that in the event that SOCIETY notifies LICENSEE in writing that it is willing to clear such a composition without limitation to a specific program, such composition shall thereafter be regarded as a "cleared composition" until such time as SOCIETY shall rescind such clearance.

C. For the purpose of this Paragraph "9" only, any musical composition (other than a musical composition or group of musical compositions expressly excepted therefrom or that may be restricted because of the operation of Paragraph "4" hereof) which is listed in

(a) the perforated sheets known as the "ASCAP Index" previously furnished by SOCIETY to LICENSEE, or

(b) the bound volume entitled "ASCAP Index 1952", or

(c) the bound volume entitled "ASCAP Supplement Index 1954",

as the same may have been revised heretofore or as the same may hereafter be revised, as a musical composition heretofore copyrighted by a present member of SOCIETY listed in Schedule "A" as such list of present members may be augmented from time to time shall be deemed to be included in the repertory of SOCIETY. SOCIETY shall have the right to make reasonable revisions in such Indices from time to time, provided, however, that no such revision and no exception referred to above shall be effective as to any broadcast of LICENSEE'S local programs made, or delayed or repeat broadcasts thereof scheduled, prior to the date on which LICENSEE shall have received notice of such revision or exception. Nothing in this Sub-paragraph "C" shall be deemed to limit LICENSEE'S rights or to limit or affect LICENSEE'S obligations to pay the license fees payable under this agreement or to limit SOCIETY'S obligations to indemnify as provided in Sub-paragraph "A" of this Paragraph "9".

D. The provisions contained in Paragraph "9" shall apply to LICENSEE'S sponsors and their advertising agencies, and its or their artists, as to LICENSEE'S local television programs with the same effect as if in each instance there had been added to "LICENSEE" the words "its sponsors and their advertising agencies, its and their artists, and each of them".

10. SOCIETY agrees during the term hereof to maintain for the service of LICENSEE substantially SOCIETY'S present repertory of compositions copyrighted, composed or written by present members of SOCIETY listed in Schedule "A" as such list of present members may be augmented from time to time. In case there shall be a substantial diminution, by reason of action by SOCIETY or any such members, in the use which LICENSEE may make of compositions copyrighted, composed or written by such members of SOCIETY as compared to the use which LICENSEE customarily has been permitted to make of such compositions prior to the actual execution of this agreement or in case there shall be a substantial diminution in SOCIETY'S present repertory of compositions copyrighted, composed or written by present members of SOCIETY listed in Schedule "A" as such list of present members may be augmented from time to time, LICENSEE may give SOCIETY thirty (30) days' notice in writing to cure such substantial diminution. In the event that such substantial diminution in use or repertory has not been cured within said thirty (30) days, LICENSEE may then promptly terminate this agreement. If LICENSEE does not so terminate, LICENSEE shall have the right to obtain a reduction, as hereinafter provided, in the percentage payable on its "net receipts from sponsors after deductions" proportionate to such substantial diminution in use or repertory.

In the event that (a) such a substantial diminution in use or repertory shall have occurred and LICENSEE shall have notified SOCIETY thereof, and (b) SOCIETY shall not have cured such diminution within thirty (30) days thereafter, and (c) SOCIETY and LICENSEE shall be unable to agree within such thirty (30) days either as to the existence of such a diminution as would justify a decrease in the license fees payable hereunder or as to the appropriate reduction in the percentage payable on LICENSEE'S "net receipts from sponsors after deductions" by reason of such diminution, and (d) LICENSEE shall not have terminated this agreement as herein provided, the controversy shall be determined by arbitration as herein provided.

In the event that such a substantial diminution in use or repertory shall have been determined to exist as herein provided and thereafter SOCIETY shall have cured such diminution, SOCIETY shall have the right to obtain, as herein provided, the restoration of any reduction theretofore made in the license fees payable under this agreement by reason of such diminution. In the event that SOCIETY shall notify LICENSEE that in SOCIETY'S opinion any substantial diminution in use or repertory shall have been cured and within thirty (30) days thereafter SOCIETY and LICENSEE shall be unable to agree as to whether or not such diminution shall have been cured, the controversy shall be determined by arbitration as herein provided.

Any award of the arbitrators with respect to any controversy submitted to arbitration under this Paragraph "10" and reducing or restoring the percentage payable by LICENSEE hereunder shall be effective as of whichever shall be the later of (a) the date on which LICENSEE or SOCIETY, as the case may be, shall have given the other notice of such substantial diminution in use of repertory or the curing thereof, or (b) the date, if any, which the arbitrators shall specify as the date on which such diminution occurred or was cured.

In case any controversy is to be determined by arbitration as provided above, such arbitration shall be conducted under and pursuant to the laws of the State of New York, in accordance with the provisions of Paragraph "11" hereof.

In case the arbitrators shall determine that there has been such a substantial diminution in use or repertory and shall make an award reducing the percentage payable by LICENSEE on its "net receipts from sponsors after deductions", the reduction in such percentage payable by LICENSEE made by such award shall in no event be greater than the participation in such percentage payments of the publisher member or members of SOCIETY whose catalogue or catalogues shall have been the subject of such substantial diminution in use or repertory. The participation of such publisher member or members in such percentage payments made by LICENSEE hereunder shall be deemed to be the same percentage of such payments by LICENSEE as the percentage which such publisher member's or members' income from SOCIETY in respect of television distribution for the year immediately preceding shall bear to the entire distribution of royalties in respect of television by SOCIETY to all of its publisher members during such year.

11. In the event that during the term of this agreement there is to be determined by arbitration hereunder whether there has been such a substantial diminution in use or repertory and, if so, the percentage by which the license fees payable hereunder shall be reduced by reason thereof, or whether a substantial diminution has been cured, as the case may be, as provided in Paragraph "10", each party shall on written notice to the other appoint an arbitrator within two (2) weeks after the expiration of the applicable thirty (30) day period specified in Paragraph "10" hereof.

In the event that within ten (10) days after the giving of such notice by one party, the other shall not by written notice appoint another arbitrator, then upon the written request of either party (or both) the person who is at the time performing the functions of President of the American Arbitration Association shall appoint the second arbitrator. When two arbitrators have been appointed they shall, if possible, agree upon a third arbitrator and shall appoint him by notice in writing, in triplicate, signed by both of them, one of which triplicate notices shall be given to each party hereto. If ten (10) days shall elapse after the appointment of the second arbitrator without notice of the appointment of the third arbitrator having been given, then upon the written request of either party (or both) the person who is at the time performing the functions of President of the American Arbitration Association shall appoint the third arbitrator. Upon appointment of the third arbitrator the three arbitrators shall hold a hearing and give opportunity to each party hereto to present his case in the presence of the other, and shall then make their award determining the license fees which shall be paid by LICENSEE to SOCIETY, taking into consideration all applicable factors which tend to determine whether there has been such a substantial diminution and, if so, the extent thereof and the percentage by which the license fees payable hereunder shall be reduced by reason thereof, or whether a substantial diminution has been cured, as the case may be, as provided in Paragraph "10". The arbitration shall be conducted in accordance with the rules of the American Arbitration Association then in effect.

The award of the majority of the arbitrators shall be binding upon the parties hereto, judgment may be entered thereon in any court having jurisdiction, and this agreement shall be deemed to be modified accordingly. Such award shall include the fixing of the expenses of the arbitration, which shall be borne equally by both parties.

12. In the event of the termination or suspension of the governmental licenses covering the Station or any substantial alteration or variation of the terms and conditions thereof, or any major interference with the operations of the Station due to governmental measures or restrictions, LICENSEE shall have the right to terminate this agreement upon seven (7) days' notice.

13. All notices required or permitted to be given by either of the parties to the other hereunder shall be duly and properly given if mailed to such other party by registered United States mail addressed to such other party at its main office for the transaction of business.

14. This agreement shall enure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns, but no assignment shall relieve the parties hereto of their respective obligations hereunder as to performances broadcast, acts done and obligations incurred prior to the effective date of the assignment.

IN WITNESS WHEREOF, this agreement has been duly executed by SOCIETY and LICENSEE this

day of , 19 , as of the day of , 19

AMERICAN SOCIETY OF COMPOSERS,
AUTHORS AND PUBLISHERS

By .....

.....
LICENSEE

By .....

LOCAL STATION PER PROGRAM TELEVISION LICENSE

E 367

Agreement made between AMERICAN SOCIETY OF COMPOSERS, AUTHORS AND PUBLISHERS (herein referred to as "SOCIETY") and

(herein referred to as "LICENSEE") as follows:

1. A. SOCIETY grants to LICENSEE and LICENSEE accepts for a period commencing as of and ending a license to perform publicly by television broadcasting on LICENSEE'S local television programs from Television Station located at

(herein referred to as "the Station") non-dramatic performances of the separate musical compositions heretofore copyrighted, composed or written by those members of SOCIETY listed in Schedule "A" attached hereto (as the same may be augmented from time to time) and now or hereafter during the term hereof in the repertory of SOCIETY, or hereafter during the term hereof copyrighted, composed or written by such members of SOCIETY, or of which SOCIETY shall have the right to license such performing rights. As additional members of SOCIETY hereafter grant to SOCIETY the right to license performances by means of television broadcasting, such additional members will be added to those listed in Schedule "A" as of the date upon which SOCIETY acquires such rights.

B. This license does not extend to or include the public performance by television broadcasting or otherwise of any rendition or performance of (a) any opera, operetta, musical comedy, play or like production, as such, in whole or in part, or (b) any composition from any opera, operetta, musical comedy, play or like production (whether or not such opera, operetta, musical comedy, play or like production was presented on the stage or in motion picture form) in a manner which recreates the performance of such composition with substantially such distinctive scenery or costume as was used in the presentation of such opera, operetta, musical comedy, play or like production (whether or not such opera, operetta, musical comedy, play or like production was presented on the stage or in motion picture form); provided, however, that the rights granted to LICENSEE under this agreement shall be deemed to include a grant of the right to make non-dramatic performances of compositions licensed hereunder by the television broadcasting of a motion picture containing such compositions if the rights in such motion picture other than those licensed under this agreement have been obtained from the parties in interest.

Nothing herein contained shall be deemed to license the public performance by television broadcasting of dramatic performances. Any performance of a separate musical composition which is not a dramatic performance, as defined herein, shall be deemed to be a non-dramatic performance. For the purposes of this agreement, a dramatic performance shall mean a performance of a musical composition on a television program in which there is a definite plot depicted by action and where the performance of the musical composition is woven into and carries forward the plot and its accompanying action. The use of dialogue to establish a mere program format or the use of any non-dramatic device merely to introduce a performance of a composition shall not be deemed to make such performance dramatic.

The definition of the terms "dramatic" and "non-dramatic" performances contained in this Sub-paragraph "1B" are purely for the purposes of this agreement and for the term thereof and shall not be binding upon or prejudicial to any position taken by either of the parties subsequent to the expiration thereof or for any purpose other than this agreement.

C. Except as expressly herein otherwise provided, nothing herein contained shall be construed as authorizing LICENSEE to grant to others any right to reproduce or perform publicly for profit by any means, method or process whatsoever, any of the musical compositions licensed hereunder or as authorizing any receiver of any television broadcast to perform publicly or or reproduce the same for profit, by any means, method or process whatsoever.

2. A. "Local television program" as used in this agreement shall be deemed to mean a program, whether or not such program shall include visual material, broadcast from the Station other than a network television program. The performances licensed hereunder may originate at the Station or at any other place whether or not such other place is licensed to perform publicly for profit the compositions licensed hereunder, regardless of the manner, means, or method of such origination; but nothing herein contained shall be deemed to grant a license to such place itself (or to the parties responsible for the performance therein) for the public performance for profit in such place of any such compositions.

B. "Local commercial television program" as used in this agreement shall be deemed to mean any local television program in connection with which a sponsor pays directly or indirectly for the use of the television broadcasting facilities of the Station. For the purpose of this agreement, a particular period of television broadcasting shall be considered one program if, with respect to such period, any two of the following questions may be answered in the affirmative:

(1) Is the period referred to by substantially the same title throughout?

(2) Is the dominant personality the same substantially throughout?

(3) Is the period presented to the public as a single show notwithstanding that it may have different parts?

(4) Is the format substantially constant throughout?

A local commercial television program shall be deemed to include all announcements broadcast at any time following the commencement and prior to the conclusion of a program, including announcements between two consecutive segments of a program if

(a) either of such segments is sold on an announcement basis or participating basis; or

(b) both such segments are sold to the same sponsor; or

(c) neither of such segments is sold on any basis;

but shall be deemed to exclude an announcement broadcast between two separate consecutive segments (each of not less than 15 minutes' duration) of one local television program (other than a film produced originally for exhibition in motion picture theatres and first distributed to and exhibited in such theatres) if (a) each of such two separate consecutive segments is sold to a separate single sponsor or (b) one of such two separate consecutive segments is sold to a single sponsor and the other segment is not sold on any basis, and if such announcement does not include, in whole or in part, any musical composition licensed hereunder.

C. "Local sustaining television program" as used in this agreement shall be deemed to mean any local television program other than a local commercial television program.

D. "Network television program" as used in this agreement shall be deemed to mean a program, whether or not such program shall include visual material, broadcast simultaneously or by so-called "delayed" or "repeat" broadcasts (sometimes known as "rebroadcasts") over two or more affiliated stations.

E. "Affiliated station" as used in this agreement shall be deemed to mean any television broadcasting station in the United States which regularly broadcasts network television programs of a television network or which appears on the television rate cards of such network and which (a) is interconnected with such network by co-axial cable, wire, television relay or any other means whatsoever, or (b) pending the availability of such means of interconnecting the station with such network at an expenditure which is not unreasonable in comparison with the cost of interconnecting such network's other affiliated stations, is a party to a non-interconnected affiliation agreement with such network. Such station shall only be deemed to be an affiliated station so long as it regularly broadcasts such programs or appears on such rate cards, as the case may be. All television broadcasting stations in the United States which are owned and operated by a network and which broadcast such network's television programs shall be deemed to be affiliated stations for the purposes of this agreement, whether or not they appear on such network's television rate cards.

3. A. The members of SOCIETY shall have the right, at any time and from time to time, in good faith, to restrict the television broadcasting of compositions from musical comedies, operas, operettas and motion pictures, or any other composition being excessively broadcast, only for the purpose of preventing harmful effect upon such musical comedies, operas, operettas, motion pictures or compositions, in respect of other interests under the copyrights thereof; provided, however, that the maximum number of compositions which may be at any time thus restricted shall not exceed 750 and moreover that limited licenses will be granted upon application to SOCIETY entirely free of additional charge as to restricted compositions, if and when the copyright owners thereof are unable to show reasonable hazards to their major interests likely to result from such television broadcasting; and provided further that such right to restrict any such composition shall not be exercised for the purpose of permit-

ting the fixing or regulating of fees for the recording or transcribing of such composition; and provided further that in no case shall any charges, "free plugs", or other consideration be required in respect of any permission granted to perform a restricted composition; and provided further that in no event shall any composition, after the initial television broadcast thereof, be restricted for the purpose of confining further television broadcasts thereof to a particular artist, station, network or program.

B. SOCIETY reserves the further right, at any time and from time to time, in good faith, to restrict the television broadcasting of any compositions as to which any suit has been brought or threatened on a claim that such composition infringes a composition not contained in the repertory of SOCIETY or on a claim by a non-member of SOCIETY or by a member not listed in Schedule "A", as the same may be augmented from time to time, that SOCIETY does not have the right to license the public performance of such composition by television broadcasting.

4. A. In consideration of the license herein granted, LICENSEE agrees to pay to SOCIETY for each calendar month during each contract year during the term hereof the following:

(1) COMMERCIAL FEE: (a) 9% of its "net receipts from sponsors after deductions" on local commercial television programs of which any or all of the musical content shall include, in whole or in part, any musical composition licensed hereunder except those programs consisting of films produced originally for exhibition in motion picture theatres and first distributed to and exhibited in such theatres, and which make only incidental use in such films of any of the compositions licensed hereunder as provided in subdivision "(b)" of this Sub-paragraph "4A(1)".

(b) 4% of its "net receipts from sponsors after deductions" on local commercial television programs consisting of films produced originally for exhibition in motion picture theatres and first distributed to and exhibited in such theatres, and which make only incidental use in such films of any of the compositions licensed hereunder in the following manner: as instrumental bridge, cue or background music only.

The term "net receipts from sponsors after deductions on local commercial television programs" as used in this Sub-paragraph "4A(1)" shall include net receipts from sponsors after deductions on announcements included in such programs as described in Sub-paragraph "2B" of this agreement.

(2) SUSTAINING FEE: For each of its local sustaining television programs of which any or all of the musical content shall include, in whole or in part, any musical composition licensed hereunder, a sum equal to 3½% of the Station's full television card rate as published in Standard Rate and Data applicable to a single local commercial television program for the time when such local sustaining television program shall be broadcast, subject to the following deductions:

(a) Rate card discounts, if any, which would normally be actually allowed to sponsors for such period of time.

(b) Advertising agency commission not to exceed 15% if normally actually allowed to recognized advertising agencies not owned or controlled by LICENSEE.

(c) A sales commission equal to 15% of the amount remaining after items "(a)" and "(b)" of this Sub-paragraph "4A(2)" are deducted therefrom;

provided that in no event shall the license fees payable under this Sub-paragraph "4A(2)" for any contract year during the term hereof exceed a sum equal to twelve times the highest quarter-hour card rate of the Station for a single quarter-hour of television broadcasting. In the event that the license fees paid to SOCIETY under this Sub-paragraph "4A(2)" for any contract year during the term hereof shall exceed a sum equal to twelve times such highest quarter-hour card rate, a final adjustment shall be made within 30 days after the end of such contract year and SOCIETY shall refund to LICENSEE the difference between (a) the license fees paid to SOCIETY under this Sub-paragraph "4A(2)" for such contract year and (b) such sum equal to twelve times such highest quarter-hour card rate.

For the purpose of this Sub-paragraph "4A", the fee with respect to an announcement which includes, in whole or in part, any musical composition licensed hereunder—but with respect to which no payment would have been required under Sub-paragraph "4G" of this agreement if such announcement did not include, in whole or in part, any musical composition licensed hereunder—will be computed as provided above with respect to "Commercial Fee" and "Sustaining Fee" respectively, as the case may be.

B. The term "net receipts from sponsors" as used in this agreement shall be deemed to mean the gross amount paid for the use of television broadcasting facilities of the Station for LICENSEE'S local commercial television programs, as defined herein, less any advertising agency commission not to exceed 15% actually allowed to a recognized advertising agency not owned or controlled by LICENSEE.

C. The term "net receipts from sponsors after deductions" as used in this agreement shall be deemed to mean net receipts from sponsors, less a sales commission on the net receipts from sponsors equal to 15% of such net receipts.

D. The term "gross amount paid for the use of television broadcasting facilities of the Station for LICENSEE'S local commercial television programs" as used in this agreement shall be deemed to mean all payments made (whether in money or in any other form) by or on behalf of the sponsor of each program for the use of the television broadcasting facilities of the Station for local commercial television programs, after deducting only rate card discounts, quantity and/or frequency, actually allowed, and whether such payment shall have been made directly to LICENSEE or to any other persons, firms or corporations. Where merchandise, services or any thing or service of value is received in lieu of cash consideration for the use of the television broadcasting facilities of the Station, the same shall be described and the reasonable value thereof determined and accounting made to SOCIETY upon the same basis as if a regular billing had been made by LICENSEE therefor in a sum equal to such reasonable value which in no event shall be deemed to exceed LICENSEE'S prevailing published card rate for such television broadcasting facilities.

E. No payment shall be required hereunder with respect to bona fide charges for the use of facilities furnished by LICENSEE to sponsors other than for time on the air, as such, provided:

(a) that such charges are itemized separately when billed to the sponsors or their advertising agencies; and

(b) that such charges are in addition to LICENSEE'S published applicable card rate (less applicable rate card discounts, quantity and/or frequency, actually allowed) for the use of LICENSEE'S television broadcasting facilities (i.e., time on the air) for the actual broadcast.

For the purpose of this Sub-paragraph "4E", there shall be included in the term "LICENSEE'S published applicable card rate (less applicable rate card discounts, quantity and/or frequency, actually allowed) for the use of LICENSEE's television broadcasting facilities (i. e., time on the air) for the actual broadcast" charges for facilities normally required at LICENSEE'S station as a bona fide minimum for the television broadcast of a live studio program or a film program, as the case may be, excluding bona fide charges for rehearsal provided that they comply with the requirements of subdivisions "(a)" and "(b)" of this Sub-paragraph "4E".

F. Co-operative programs are programs which are furnished by a network to its affiliated stations under an arrangement permitting an affiliate to broadcast such programs on a sustaining basis or on a commercial basis under the sponsorship of a local, regional or national advertiser contracting directly with such affiliated station or its representative for the incorporation of the commercial credits of such advertiser into the program as broadcast by such affiliated station. For the purposes of this agreement only, and without prejudice to the position of SOCIETY or LICENSEE or any network of which LICENSEE is an affiliated station as to the status of co-operative programs under SOCIETY'S non-visual broadcasting licenses, such co-operative television programs shall be deemed to be "network television programs" as defined herein.

G. No payment shall be required hereunder with respect to any sums received from an announcement

(1) which is broadcast before the start or after the completion of any television program, or

(2) which interrupts a network television program broadcast by a network licensed by SOCIETY provided the interruption is to allow identification of the network and local station in accordance with generally prevailing national network practices, or

(3) which is broadcast between two separate consecutive segments (each of not less than 15 minutes' duration) of one local television program (other than film produced originally for exhibition in motion picture theatres and first distributed to and exhibited in such theatres) if (a) each of such two separate consecutive segments is sold to a separate single sponsor or (b) one of such two separate consecutive segments is sold to a single sponsor and the other segment is not sold on any basis,

provided that such announcement does not include, in whole or in part, any musical composition licensed hereunder.

H. No payment shall be required hereunder with respect to any sums received from political local television programs of LICENSEE.

I. No payment shall be required hereunder with respect to a local commercial or sustaining television program of LICENSEE presented by motion picture or by transcription if a license has been granted at the source to perform the mu

compositions embodied in such motion picture or transcription on said program of LICENSEE by means of television broadcasting of such motion picture or such transcription by (a) SOCIETY, or (b) the composer(s), author(s) and publisher(s) of such musical compositions, and LICENSEE shall have given SOCIETY notice in writing of such license at the source and the terms thereof (including the title of the motion picture, the name of the producer and the music cue sheet of such motion picture listing the composer(s), author(s) and publisher(s) of each musical composition embodied therein) at least seven days prior to LICENSEE'S television broadcast of said program.

J. If any local television program of LICENSEE produced solely for broadcasting purposes is presented in a studio, auditorium or hall where an audience is admitted free of charge, or where the entire admittance charge is paid to an eleemosynary institution which shall request a gratuitous license from SOCIETY, no additional royalties or fees shall be charged by reason of the presence of such audience.

5. A. LICENSEE shall furnish to SOCIETY postage prepaid on or before the 20th day of each month during the term hereof covering the period of the preceding calendar month:

(1) A copy of the complete television log for each day in the form required by Federal Communications Commission Rules and Regulations, and,

(2) As to each local television program listed on such logs as musical or which has any musical content, regardless of the origination of the program, statements on forms supplied gratis by SOCIETY setting forth a complete item by item list of each musical composition rendered, in whole or in part, during each such program, and showing with respect to each such program: (a) the date of rendition; (b) the title of the program; (c) the time rendered; (d) as to each musical composition rendered on such programs, the full title thereof, the name of the composer and author, and the name of the copyright owner as imprinted on the published sheet of music or orchestration, it being understood that titles may not be abbreviated but must be shown in full; (e) as to each musical composition, a brief notation of the scenery and costumes used, if any; (f) as to each local commercial television program, the name of each sponsor thereof and as to each such sponsor the gross amount paid for the use of the television broadcasting facilities of the Station for LICENSEE'S local commercial television programs, and also showing all deductions in order to arrive at "net receipts from sponsors" and "net receipts from sponsors after deductions" as herein provided, without exception, and the percentage thereof payable to SOCIETY; and (g) as to each local sustaining television program, the Station's full television card rate as published in Standard Rate and Data applicable to a single local commercial television program for the time when such local sustaining television program shall have been broadcast, and all deductions applicable thereto. Said statements shall be accompanied by remittance due SOCIETY under the terms hereof.

B. At the request of SOCIETY, LICENSEE will furnish to SOCIETY the dialogue, if any, used in specified programs. SOCIETY will only ask for dialogue where it is reasonably necessary for its purposes. In cases where dialogue is only available in recorded form it will be sufficient for LICENSEE to permit SOCIETY to screen the recording. When the dialogue is available in written form in any of the cities where SOCIETY has an office and it is inconvenient for LICENSEE to make an additional copy, it will be sufficient if LICENSEE permits a representative of SOCIETY to examine the file copy of the dialogue at LICENSEE'S office. LICENSEE will have no obligation to furnish SOCIETY with dialogue in cases where it does not have within its control either a written or recorded version of the dialogue.

C. With respect to motion pictures broadcast from or through the Station on LICENSEE'S local television programs, the requirement of subdivision "(d)" of Sub-paragraph "5A(2)" shall be deemed to have been complied with if LICENSEE shall identify the motion picture for SOCIETY by its title, the name of the producer where available, and the copyright notice contained therein where available, and if LICENSEE shall furnish the customary music cue sheet of such motion picture.

D. Any failure of LICENSEE to comply with the requirements set out in this Paragraph "5" as to the complete identification of compositions performed on local television programs shall create the presumption that the music and/or compositions used were compositions in the repertory of SOCIETY. Anything to the contrary herein notwithstanding, this license shall not extend to or include compositions wholly unreported in such statements.

6. Accounting and payments shall be made on a billing basis with the right of deduction or rebate for bad accounts and discounts allowed or rebates paid. All billings made subsequent to the termination of this agreement with respect to local television broadcasts made during the term hereof shall be accounted for by LICENSEE as and when such billings are made by LICENSEE.

7. SOCIETY shall have the right, by its duly authorized representatives at any time during customary business hours, to examine the books and records of account (including logs and all other records, relating to the music and/or compositions performed on local programs of the Station) of LICENSEE only to such extent as may be necessary to verify (a) any statement of accounting required pursuant hereto, and (b) any statement of accounting to SOCIETY required of a network in connection with co-operative television programs made available to LICENSEE by such network. SOCIETY shall consider all data and information coming to its attention as a result of any such examination of books and records as completely and entirely confidential.

8. Upon any breach or default by LICENSEE of any terms herein contained relating to the reports, accountings or payments required to be made by LICENSEE, SOCIETY may give LICENSEE thirty (30) days' notice in writing to cure such breach or default, and in the event that such breach or default has not been cured within said thirty (30) days, SOCIETY may then promptly terminate this license.

9. A. SOCIETY agrees to indemnify, save and hold LICENSEE, its sponsors and their advertising agencies, its and their artists, and each of them harmless, and defend LICENSEE, its sponsors and their advertising agencies, its and their artists, and each of them from and against any claim, demand or suit that may be made or brought against them or any of them with respect to performances given on LICENSEE'S local television programs during the term hereof in accordance with this license of (a) "cleared compositions", or (b) musical compositions heretofore copyrighted, composed or written by members of SOCIETY listed in Schedule "A" as augmented from time to time and now or hereafter during the term hereof in the repertory of SOCIETY, or (c) musical compositions hereafter during the term hereof copyrighted, composed or written by such members of SOCIETY, or (d) musical compositions which SOCIETY shall hereafter certify in writing to LICENSEE as musical compositions copyrighted, composed or written by such members of SOCIETY and included in SOCIETY'S repertory for the purposes of this agreement, or (e) musical compositions "deemed to be included in the repertory of SOCIETY" in accordance with the provisions of Sub-paragraph "9C". In the event of the service upon LICENSEE of any notice, process, paper or pleading under which a claim, demand or action is made or begun against LICENSEE on account of any such matter as is hereinabove referred to, LICENSEE shall promptly give SOCIETY written notice thereof and simultaneously therewith deliver to SOCIETY any such notice, process, paper or pleading, or a copy thereof, and SOCIETY at its own expense shall have sole charge of the defense of any such action or proceeding. LICENSEE, however, shall have the right to engage counsel of its own, at its own expense, who may participate in the defense of any such action or proceeding and with whom counsel for SOCIETY shall cooperate. LICENSEE shall cooperate with SOCIETY in every way in the defense of any such action or proceeding, and in any appeals that may be taken from any judgments or orders entered therein, and shall execute all pleadings, bonds or other instruments, but at the sole expense of SOCIETY, that may be required in order properly to defend and resist any such action or proceeding, and prosecute any appeals taken therein. In the event of the service upon LICENSEE of any notice, process, paper or pleading under which a claim, demand or action is made or begun against LICENSEE on account of the performance on LICENSEE'S local television programs of any musical composition (other than a "cleared composition") contained in the repertory of SOCIETY but not heretofore or hereafter during the term hereof copyrighted, composed or written by members of SOCIETY and not certified by SOCIETY as a musical composition copyrighted, composed or written by members of SOCIETY, SOCIETY agrees at the request of LICENSEE to cooperate with and assist LICENSEE in the defense of any such action or proceeding, and in any appeals that LICENSEE may elect to take from any judgments or orders entered therein.

B. As used in this Paragraph "9", a "cleared composition" shall mean any composition in the repertory of SOCIETY, not copyrighted, composed or written by a member of SOCIETY, which SOCIETY shall have notified LICENSEE is a composition with respect to which SOCIETY is willing to indemnify LICENSEE, provided that the performance of such composition shall be made on the specific local television program of LICENSEE for which a clearance shall have been given by SOCIETY; provided further, however, that in the event that SOCIETY notifies LICENSEE in writing that it is willing to clear such a composition without limitation to a specific program, such composition shall thereafter be regarded as a "cleared composition" until such time as SOCIETY shall rescind such clearance.

C. For the purpose of this Paragraph "9" only, any musical composition (other than a musical composition or group of musical compositions expressly excepted therefrom or that may be restricted because of the operation of Paragraph "3" hereof) which is listed in either

(a) the perforated sheets known as the "ASCAP Index" previously furnished by SOCIETY to LICENSEE, or

(b) the bound volume entitled "ASCAP Index 1952",

as the same may have been revised heretofore or as the same may hereafter be revised, as a musical composition heretofore copyrighted by a present member of SOCIETY listed in Schedule "A" as such list of present members may be augmented from

time to time shall be deemed to be included in the repertory of SOCIETY, SOCIETY shall have the right to make reasonable revisions in such Indices from time to time, provided, however, that no such revision and no exception referred to above shall be effective as to any broadcast of LICENSEE'S local programs made, or delayed or repeat broadcasts thereof scheduled, prior to the date on which LICENSEE shall have received notice of such revision or exception. Nothing in this Sub-paragraph "9C" shall be deemed to limit LICENSEE'S rights or to limit or affect LICENSEE'S obligations to pay the license fees payable under this agreement or to limit SOCIETY'S obligations to indemnify as provided in Sub-paragraph "9A".

D. The provisions contained in Paragraph "9" shall apply to LICENSEE'S sponsors and their advertising agencies, and its or their artists, as to LICENSEE'S local television programs with the same effect as if in each instance there had been added to "LICENSEE" the words "its sponsors and their advertising agencies, its and their artists, and each of them".

10. SOCIETY agrees during the term hereof to maintain for the service of LICENSEE substantially SOCIETY'S present repertory of compositions copyrighted, composed or written by present members of SOCIETY listed in Schedule "A" as such list of present members may be augmented from time to time. In case there shall be a substantial diminution, by reason of action by SOCIETY or any such members, in the use which LICENSEE may make of compositions copyrighted, composed or written by such members of SOCIETY as compared to the use which LICENSEE customarily has been permitted to make of such compositions prior to the actual execution of this agreement or in case there shall be a substantial diminution in SOCIETY'S present repertory of compositions copyrighted, composed or written by present members of SOCIETY listed in Schedule "A" as such list of present members may be augmented from time to time, LICENSEE may give SOCIETY thirty (30) days' notice in writing to cure such substantial diminution. In the event that such substantial diminution in use or repertory has not been cured within said thirty (30) days, LICENSEE may then promptly terminate this agreement. If LICENSEE does not so terminate, LICENSEE shall have the right to obtain a reduction, as hereinafter provided, in the percentage payable on its "net receipts from sponsors after deductions" proportionate to such substantial diminution in use or repertory.

In the event that (a) such a substantial diminution in use or repertory shall have occurred and LICENSEE shall have notified SOCIETY thereof, and (b) SOCIETY shall not have cured such diminution within thirty (30) days thereafter, and (c) SOCIETY and LICENSEE shall be unable to agree within such thirty (30) days either as to the existence of such a diminution as would justify a decrease in the license fees payable hereunder or as to the appropriate reduction in the percentage payable on LICENSEE'S "net receipts from sponsors after deductions" by reason of such diminution, and (d) LICENSEE shall not have terminated this agreement as herein provided, the controversy shall be determined by arbitration as herein provided.

In the event that such a substantial diminution in use or repertory shall have been determined to exist as herein provided and thereafter SOCIETY shall have cured such diminution, SOCIETY shall have the right to obtain, as herein provided, the restoration of any reduction theretofore made in the license fees payable under this agreement by reason of such diminution. In the event that SOCIETY shall notify LICENSEE that in SOCIETY'S opinion any substantial diminution in use or repertory shall have been cured and within thirty (30) days thereafter SOCIETY and LICENSEE shall be unable to agree as to whether or not such diminution shall have been cured, the controversy shall be determined by arbitration as herein provided.

Any award of the arbitrators with respect to any controversy submitted to arbitration under this Paragraph "10" and reducing or restoring the percentage payable by LICENSEE hereunder shall be effective as of whichever shall be the later of (a) the date on which LICENSEE or SOCIETY, as the case may be, shall have given the other notice of such substantial diminution in use or repertory or the curing thereof, or (b) the date, if any, which the arbitrators shall specify as the date on which such diminution occurred or was cured.

In case any controversy is to be determined by arbitration as provided above, such arbitration shall be conducted under and pursuant to the laws of the State of New York, in accordance with the provisions of Paragraph "11" hereof.

In case the arbitrators shall determine that there has been such a substantial diminution in use or repertory and shall make an award reducing the percentage payable by LICENSEE on its "net receipts from sponsors after deductions", the reduction in such percentage payable by LICENSEE made by such award shall in no event be greater than the participation in such percentage payments of the publisher member or members of SOCIETY whose catalogue or catalogues shall have been the subject of such substantial diminution in use or repertory. The participation of such publisher member or members in such percentage payments made by LICENSEE hereunder shall be deemed to be the same percentage of such payments by LICENSEE as the percentage which such publisher member's or members' income from SOCIETY in respect of television distribution for the year immediately preceding shall bear to the entire distribution of royalties in respect of television by SOCIETY to all of its publisher members during such year.

11. In the event that during the term of this agreement there is to be determined by arbitration hereunder whether there has been such a substantial diminution in use or repertory and, if so, the percentage by which the license fees payable hereunder shall be reduced by reason thereof, or whether a substantial diminution has been cured, as the case may be, as provided in Paragraph "10", each party shall on written notice to the other appoint an arbitrator within two (2) weeks after the expiration of the applicable thirty (30) day period specified in Paragraph "10" hereof.

In the event that within ten (10) days after the giving of such notice by one party, the other shall not by written notice appoint another arbifrator, then upon the written request of either party (or both) the person who is at the time performing the functions of President of the American Arbitration Association shall appoint the second arbitrator. When two arbitrators have been appointed they shall, if possible, agree upon a third arbitrator and shall appoint him by notice in writing, in triplicate, signed by both of them, one of which triplicate notices shall be given to each party hereto. If ten (10) days shall elapse after the appointment of the second arbitrator without notice of the appointment of the third arbitrator having been given, then upon the written request of either party (or both) the person who is at the time performing the functions of President of the American Arbitration Association shall appoint the third arbitrator. Upon appointment of the third arbitrator the three arbitrators shall hold a hearing and give opportunity to each party hereto to present his case in the presence of the other, and shall then make their award determining the license fees which shall be paid by LICENSEE to SOCIETY, taking into consideration all applicable factors which tend to determine whether there has been such a substantial diminution and, if so, the extent thereof and the percentage by which the license fees payable hereunder shall be reduced by reason thereof, or whether a substantial diminution has been cured, as the case may be, as provided in Paragraph "10". The arbitration shall be conducted in accordance with the rules of the American Arbitration Association then in effect.

The award of the majority of the arbitrators shall be binding upon the parties hereto, judgment may be entered thereon in any court having jurisdiction, and this agreement shall be deemed to be modified accordingly. Such award shall include the fixing of the expenses of the arbitration, which shall be borne equally by both parties.

12. In the event of the termination or suspension of the governmental licenses covering the Station or any substantial alteration or variation of the terms and conditions thereof, or any major interference with the operations of the Station due to governmental measures or restrictions, LICENSEE shall have the right to terminate this agreement upon seven (7) days' notice.

13. All notices required or permitted to be given by either of the parties to the other hereunder shall be duly and properly given if mailed to such other party by registered United States mail addressed to such other party at its main office for the transaction of business.

14. This agreement shall enure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns, but no assignment shall relieve the parties hereto of their respective obligations hereunder as to performances broadcast, acts done and obligations incurred prior to the effective date of the assignment.

IN WITNESS WHEREOF, this agreement has been duly executed by SOCIETY and LICENSEE this day of , 19 , as of the day of , 19 .

AMERICAN SOCIETY OF COMPOSERS,
AUTHORS AND PUBLISHERS

By .....

.....
LICENSEE

By .....

307 BAR PRESS, Inc., 132 Lafayette St., New York 10013 – 966-3906

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